REPORT

OF THE

COMMISSIONERS

APPOINTED BY THE GOVERNOR UNDER AUTHORITY OF A JOINT RESOLUTION OF THE TWO HOUSES OF THE LEGISLATURE OF THE STATE OF NEW YORK, PASSED APRIL 26, 1870

TO REVISE THE LAWS

FOR THE

ASSESSMENT AND COLLECTION OF TAXES.

DAVID A. WELLS,
EDWIN DODGE,
GEORGE W. CUYLER,
} *Commissioners.*

"I INSIST THAT A PEOPLE CANNOT PROSPER WHOSE OFFICERS EITHER WORK OR TELL LIES. THERE IS NOT AN ASSESSMENT ROLL NOW MADE OUT IN THIS STATE THAT DOES NOT BOTH TELL AND WORK LIES."—*Speech of Hon. M. I. Townsend, Delegate at Large Constitutional Convention of New York.* 1867-68. *Proceedings and Debates, vol.* 3, *p.* 1945.

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STATE OF NEW YORK.

No. 39.

IN ASSEMBLY,

February 16, 1871.

REPORT

OF THE COMMISSIONERS APPOINTED BY THE GOVERNOR TO REVISE THE LAWS FOR THE ASSESSMENT AND COLLECTION OF TAXES.

STATE OF NEW YORK:

EXECUTIVE CHAMBER,
ALBANY *February 16th*, 1871.

To the Legislature:

A joint resolution was passed by the Legislature, at its last session, authorizing me to appoint three commissioners "to revise the laws for the assessment and collection of taxes." I appointed David A. Wells, Edwin Dodge and George W. Cuyler; and I now transmit their report. This report was not completed in time to allow such an examination of it, on my part, as would enable me to form an opinion of the expediency of adopting the recommendations made. It is apparent, however, that the report contains a great amount of information and of argument, which will afford most valuable aid to the Legislature and the people, in coming to an intelligent judgment upon the questions involved. No subject is more important than this one to the interests of the people, and consequently none is more worthy of your attention.

The tax system prevalent in the other States is, in its main features, the same as in our own; and the information furnished in this report

will be very valuable, not only to the people of our own State, but to the country at large. It is right that New York, the State foremost in population and wealth, should take the lead in investigating this great question, and in adopting such improvements as are shown to be valuable.

The interests of the people require a method of taxation at once equitable, effective and free from unnecessary oppression; one which will yield the requisite revenue while subjecting them as little as possible to inquisitorial vexation, and which shall be attended with the least expense for official services and afford the fewest temptations to fraud, concealment or evasion.

If the commissioners have succeeded in devising such a system, it should be adopted as early as possible. In view of the importance of the subject to the general welfare, I earnestly commend the report to your immediate and careful consideration.

Unless otherwise instructed by the Legislature, the commissioners will deem themselves authorized to go on and complete their work by preparing and submitting such laws as they think necessary to the carrying out of their views.

JOHN T. HOFFMAN.

REPORT.

ALBANY, *February*, 1871.

SIR.—The undersigned members of the commission, appointed by the Governor of the State of New York, under the provisions of a joint resolution of the Legislature, passed April 26th, 1870, have the honor to submit the following report:

ORGANIZATION OF THE COMMISSION.

The following are the provisions of the joint resolution above eferred to, constituting the commission:

STATE OF NEW YORK,
IN ASSEMBLY—ALBANY, *April 9th*, 1870.

Resolved (if the Senate concur), That the Governor designate and appoint three suitable persons to revise the laws for the assessment and collection of taxes, and whose duty it shall be to report to the next Legislature, within ten days after the commencement of the session.

By order.
C. W. ARMSTRONG,
Clerk.

IN SENATE—*April 26th*, 1870.

Concurred in without amendment.

HIRAM CALKINS,
Clerk.

The commission thus authorized, became fully organized in October, 1870, by the appointment of the following members: David A. Wells, Edwin Dodge and George W. Cuyler, and has since then been actively engaged in the discharge of the duties assigned it.

Conditions Precedent to the Investigation.

Previous to the war, or at a date not far antecedent to that period, the United States was in the anomalous position of a great nation, composed of numerous separate States, which, both collectively and individually, were not only practically free from debt, but in which, moreover, the small burden of taxation made necessary to meet the cost of a simple and economical administration of public affairs, was levied on a people whose increase in wealth and numbers was rapid and continuous without precedent. Under such circumstances, it was not to be wondered that the matter of taxation, or the taking of private property for public uses, the greatest and most important function, except the control of the person and the taking of life, which the State can exercise, was regarded as a matter of comparatively little importance; and that the systems for raising revenue in the different States, and by the national government, grew up under the force of accident and circumstance, rather than as the result of consideration and inquiry.

In short, the people paid what was necessary out of their abundance, and, in the case of the general government, paid only indirectly; and were too busy in developing the country and increasing their individual possessions to take much, if any, interest in the subject. Hence, the crudities, irregularities and absurdities which characterizes the existing systems of the United States for the raising of the public revenues, and which, to the student of political economy and finance in the old world, who has not fully recognized the conditions of our previous national growth and development, seem so utterly surprising, and so inconsistent with the general intelligence and practical character of the American people. Hence, the United States, at this period of its history, repeats the experience of all other new States and communities in respect to matters of finance;* originating

* It is a curious and interesting fact, first pointed out by William M. Gouge (Fiscal History of Texas, Phil., 1852), that Texas, during her brief existence as a republic (when she was in truth an American State, but without the Union, and as such free from the restraints imposed by the United States Constitution), originated and repeated nearly all the fiscal faults which had previously characterized the financial history of older and more important nationalities;—such as unlimited paper money, irredeemable currency, export duties, high advalorem tariffs, tonnage taxes, banking on the basis of land, foreign loans, repudiation. It is also certain that the United States cannot claim the honor of originating the brilliant and philosophical idea, "that a national debt is a national blessing," as is shown by the following extract from a report of a committee of the Texas Congress (Mr. Chenoweth, Chairman), submitted Decemoer 16, 1837, which reads as follows: "An outstanding national debt may, in many respects, be looked upon as beneficial, by a community isolated and dependent as Texas, if the creditors, as such, can afford us substantial patronage. And, until we stand immutable among the nations of the earth, your committee would advise that the pecuniary interests of our creditors will excite for us the sympathies and protection of mankind." One lesson which Texas

theories and adopting practices that find their only parallel in the records of the middle ages. Hence, the recent sober maintenance of a proposition that a "national debt is a national blessing;" or those other correlative absurdities, now made the basis of the *national* financial policy, that the prosperity of the country may be enhanced by the maintenance of excessive taxation, or what is the same thing, of excessive deprivation; or that national growth may be best promoted by the continuance of a general and not exceptional system of taxing the many with special reference to the interest of a few.

But, with a change in the condition of State and local affairs growing out of increased taxation, through the increase of public expenditures, the aggregate of taxation of the State of New York for example, having increased three-fold from 1850 to 1860, or from $6,312,787 to $18,956,024, public attention, before dormant and indifferent, had begun, even previous to the war, to be awakened to the subject of a reform in the matter of local taxation; and since the war and its involved expenditures has added to the difficulties of the situation, the former feeling that some better system of raising State revenues, both as respects law and administration, than any now existing was needed, has become much more general and intensified.

The Recent Increase of Taxation.

It is a digression at this point, altogether pertinent to our subject, and one always of importance to the public, to briefly call attention to the facts respecting the increase of taxation, which the nation within the last ten years has authorized and experienced. Previous to 1861, the annual revenues of the national government derived from taxation had never exceeded $75,000,000; but since then they have risen in one year to an aggregate of over $550,000,000; and, for the last fiscal year, were in excess of $400,000,000.

In the State of New York the aggregate of taxation has advanced from $20,402,276 in 1861 to $50,328,684 in 1870. In Massachusetts, during the period, 1861 to 1869, from $7,600,000 to $21,921,569, and in Ohio, from $11,071,000 to $22,232,877. In all history there is

derived from her fiscal experimentation and bankruptcy may be inferred from the following provision of her Constitution as a State, adopted August, 1845: "In no case shall the Legislature have power to issue 'treasury notes,' or paper of any description, intended to circulate as money;" and from the following act of her first Legislature, after admission to the Union as a State: "No person or persons within this State shall issue any bill, promissory note, check, or other paper, to circulate as money."

probably no precedent for so rapid an increase of public burdens within so limited a period, and the extent of increase may be further illustrated by the circumstance, that the aggregate of local taxation in one of the States of the Union, is at present greater *per capita*, than that of any other civilized community in existence.

Comparative Taxation of New York and Other States.

The following is an approximate exhibit of the extent of local taxation in New York, as compared with that of some other States and municipalities:

New York.—Taking the State of New York as a whole, and assuming the population (census of 1870) at 4,364,375, and the aggregate of taxation (Comptroller's report 1871) at $50,328,684, the taxation *per capita* would be $11.55. Deducting alike the population and taxation of the city and county of New York from the population and aggregate taxation of the State, the *per capita* taxation of the State would be $7.54.

Massachusetts.—Population (census 1870), 1,457,351; aggregate taxation (report Secretary of State 1870), $21,922,569; taxation *per capita*, $14.35.

Ohio.—Population (census 1870), 2,662,214; aggregate taxation, 1869, $22,232,877; taxation *per capita*, $8.72.

Vermont.—Population (census 1870), 330,552; aggregate taxation, 1870 (State county and school taxes official, town taxes estimated), $1,750,000; taxation *per capita*, $5.29.

Aggregate Taxation of the United States.

The above States of New York, Massachusetts, Ohio and Vermont, are the only ones from which the commissioners have been able to obtain the annual aggregate of taxation. They, however, undoubtedly represent the extremes and the mean of the *per capita* taxation of the different States, and afford data also for approximately estimating the aggregate annual taxation, national and State, of the whole country.

The revenues of the federal government for the fiscal year ending June 30th, 1870 (all of which, with the exception of a few millions, were derived from direct or indirect taxes), were $411,255,477. If we take the *per capita* rate of local taxation in New York as representing the average rate of all the States, then the aggregate taxation of the whole country for the year 1870 (the population assumed at 39,000,000) would have been $851,705,000. If the *per capita* rate

of Ohio is taken as the average local rate of the States, the aggregate would be $751,335,000; and if of Vermont, $627,535,000.

The aggregate *per capita* taxation of the whole country, according to these different estimates, would therefore be $21.83, $19.26, and $16.09, respectively; the last figures representing probably the minimum, and indicating a larger *per capita* taxation than any modern nation has ever before been subjected to, continuously, in time of peace.

Comparative Taxation of Municipalities.

City of New York.—Population (census of 1870), 927,436; aggregate taxation, State, city and county, 1870, $25,403,859; special taxes for local improvements (estimated), $2,000,000; total aggregate, $27,403,859; rate, 2.27; taxation, *per capita*, $29.54.*

Brooklyn.—Population (census of 1870), 396,300; aggregate taxation 1870, $7,897,538; rate, 3.87; taxation, *per capita*, $19.02.

Rochester.—Population, 63,424; aggregate taxation State, county and city (1869–'70), $752,223; rate, 6.70; taxation for local improvements (estimated), $200,000; total, $952,223; taxation, *per capita*, State, county and city, $12.05; State, county, city and local, $15.25.

Albany.—Population, 69,482; aggregate taxation, $1,397,780.50; rate, 4.57; taxation, *per capita*, $20.12.

Montreal.—Population, 150,000 (estimated); aggregate city receipts, 1870, $783,644; taxation, *per capita*, $5.23.

Troy.—Population (census 1870), 46,428; aggregate taxation State, county and city, $835,879; rate, 4.30 to 5.24; taxation, *per capita*, $18.

Boston.—Population (census of 1870), 250,701; aggregate of taxation, 1870, $9,050,420; rate, 1.53; taxation, *per capita*, $36.10.

Philadelphia.—Population (census 1870), 657,179; aggregate taxation (1870–'71), $9,026,753; rate, 1.80, 120,90; taxation, *per capita*, $13.73.

Cincinnati.—Population (census 1870), 218,900; aggregate taxation (1869), $4,199,413; rate, 3.19; taxation, *per capita*, $19.00.

* In all of the cities of which the statistics of taxation are here given, there are taxes additional to those levied by the State, city and county, on account of local expenditures; such as the widening of streets, construction of sewers, etc. These taxes are assessed upon the localities which are deemed to have been benefited, and do not appear in its general statements which are accessible to the public and published by the States. In the case of the cities of New York, Rochester, Buffalo, Chicago, Montreal, Boston, and the other cities of Massachusetts, given in the above table, the aggregate of taxes presented is believed to include all assessments; in the case of the other cities, some small addition to the aggregates and per capita's here presented must be allowed for.

Chicago.—Population (census 1870), 299,117; aggregate general taxation, $4,139,798; (1870) special, $2,336,993; rate, 1.5; aggregate, $6,476,791; taxation, *per capita*, $21.65.

Hartford, Conn., 1869.—Taxation (city and town), *per capita*, approximately, $17.14.

Providence, R. I., 1869.—Taxation, *per capita*, $17.54.

Springfield, Mass., 1869.—Taxation, *per capita*, $14.58.

Lowell, Mass., 1869.—Taxation, *per capita*, $10.58.

Worcester, Mass., 1869.—Taxation, *per capita*, $10.95.

Lynn, Mass., 1869.—Taxation, *per capita*, $13.20.

Buffalo, 1870.—Taxation, *per capita* $12.33.

Turning to Europe for further illustrations, and selecting the two localities which are believed to afford examples of the maximum of taxation for local purposes, we find the facts in respect to London and Paris to be substantially as follows:

City of London.—The population of the metropolitan district of city of London, according to the census of 1861, was 2,808,944, and the aggregate of local taxation by city authorities, vestries, district boards and the metropolitan board of works, including also all receipts in respect to the poor (poor rate) were for the fiscal year, 1867, £3,291,678, or $16,458,390; the whole indicating a *per capita* taxation for local purposes of $5.85. Of this amount £1,753,824, or $8,769,120, were on account of expenditures in respect to the poor; but under this general head of expenditures, are included the expenses of jails and houses of correction, of a class of criminal prosecutions, compensation and expense of juries, constables and other law officers, registrations of births, deaths and marriages, the support of the criminal insane, expenses of elections, public vaccination and other like charges. It should also be stated that the national government of Great Britain assumes and defrays a portion of the expenditures incident to the city of London, which, in the United States, are for the most part made a direct charge upon local property exclusively; such, for example, as all expenditures on account of public education, the maintenance of local courts, public buildings, the indigent insane, fire department, etc.; so that really the account of municipal taxation above given affords only an approximate indication of the amount of municipal expenditures. On the other hand, the national government may be supposed to reimburse itself for all municipal expenditures throughout the king-

dom by the imposition of the income and stamp taxes, and by various smaller taxes on carriages, servants, etc.

England and Wales.—The local taxation of England and Wales by counties, "unions" and parishes for 1867–68 is returned at £16,783,220 ($83,916,100). The population of England and Wales for 1868 having been 21,649.377, the rate *per capita* is accordingly $3.87. This taxation was assessed upon the rental value of real property, and averaged 2s. 10d. in the pound upon the gross estimated rental. The rate, however, varied in different counties from 1s. 6d. to 4s. 6d.

Paris.—The yearly expenditures of the city of Paris previous to the war were reported as at the rate of about $25,000,000 per annum, of which $18,000,000 were raised by what are known as *octroi* duties, or taxes in the form of a tariff on certain goods, wares and merchandise entering the city of Paris from other portions of the French territory. The municipal expenditures proper of the city of Paris were, however, so conjoined with those of the imperial government and exchequer, the two being virtually under one and the same direction and authority, that no discrimination can well be made between them. Thus, for example, a part of the annual expenditure of Paris, above referred to, was for interest on the debt created for a virtual rebuilding and reconstruction of the city; an act authorized by the government, and considered in part, at least, as a public enterprise for national as much as for municipal purposes.

It thus appears, from the above statements, that, with the exception possibly of Paris, the United States as a whole, the State of Massachusetts, and the city of Boston, take precedence over all the governments and communities in the civilized world in respect to the extent and weight of their taxation; and it may be further noted, in respect to Massachusetts and Boston, that, notwithstanding the comparative magnitude of their taxation, the annual aggregate receipts from the same have not been sufficient of late years to prevent an annual increment of both the public and municipal indebtedness. That this view of the comparative taxation of Massachusetts is not altogether new, is shown by the fact that, in 1868, the Hon. George Walker, then chairman of the finance committee of the State House of Representatives, called the attention of the Legislature to the circumstance that the amount paid in taxation, national and State, by Massachusetts, for the five years from 1862 to 1867 inclusive, amounted to an estimated aggregate of $153,000,000,

or at the rate of about $30,000,000 per annum on a currency valuation in 1865 of $1,010,000,000.*

The Radical Evil of Taxation.

But although taxation is deprivation, or the taking away of a portion of one's wages or income for other than personal purposes, it is not by any means to be argued that taxation, in itself, is necessarily an evil. On the contrary, it can probably be demonstrated that there is no one act which can be performed by a community, which brings in so large return to the credit of civilization and general happiness, as the judicious expenditure, for public purposes, of a fair percentage of the general wealth raised by an equitable system of taxation. The fruits of such expenditure are general education and general health; improved roads, diminished expenses of transportation and security for life and property. And it will be found to be a general rule, that no high degree of civilization can be maintained in a community, and indeed that no highly civilized community can exist, without comparatively large taxation; the converse of this proposition, however, at the same time not being admitted, that the existence of high taxes are necessarily a sign of high civilization. Thus, for example, observations made during the past summer in the German States which, since 1866, have been forcibly incorporated with Prussia, show that, notwithstanding the former have been subjected to a greatly increased burden of taxation, they have at the same time enjoyed a greater measure of prosperity; the same being mainly due to an improved administration, of which the increased taxation was a necessary incident.

In short, taxation in itself is no more of an evil than any other necessary and desirable form of expenditure; but it is an evil when taxation is rendered excessive through injudicious or wasteful expen-

* "Mr. Speaker, Massachusetts is in no condition to make a wasteful expenditure of money. We are now burdened with taxes to a degree which it would be difficult to parallel elsewhere; to a degree which would have bound a poorer people to the earth; to a degree which no people, not even the people of Massachusetts, can permanently endure. I have taken pains to ascertain the taxes paid in the last five years; 1862 to 1867 inclusive. They are as follows: Direct taxes by the State, $17,500,000; local taxes at $1,20 to $100 on $1,000,000,000, $60,000,000; United States in proportion as the population of 1,200,000 bears to 25,000,000, viz.; internal revenue, $45,000,000; customs, $20,588,000. Total, $153,088,000. Yearly average, $30,617,000. The valuation, according to the United States census of 1860, was 815 millions in gold, and in 1865, by the State census, 1010 millions in currency. Probably there had been no gain of wealth in the interval, as the years were years of war, and the price of gold in 1865 averaged more than 150. Taking the mean of these valuations, the taxes paid fully equaled 3½ per cent. And this, sir, was not levied upon productive property alone, but on all the property, productive and unproductive, which stands upon the assessors' books." Speech of Hon. George Walker, of Massachusetts, in the House of Representatives on the Hoosic tunnel, May 28, 1868.

ditures; or when, by reason of ill adjustment, the levy of the tax is made an occasion for the collection from the people, through the enhancement of profits and prices, of a far greater sum than is requisite to meet the public requirements. Of these evils the first is especially characteristic, at the present time, of State and municipal taxation; and the second, of national taxation, or of the taxation by the United States in general. Of the two the latter is by far the greatest; for when taxation—as in the case of the tariff on the import of specific articles, or through the increased cost of transportation through the watering of railroad stocks, or by the use of a vicious currency—is levied upon product which, in the nature of raw material, passes through successive stages of transformation or elaboration before it comes to the consumer, the tax from the beginning forms an element of the cost, on which a percentage, to represent profit, interest and risks (usually not less than ten), is levied by each person through whose hands the product passes as dealer or elaborator. It thus admits of demonstration that the $101,000,000 paid on the principal of the public debt during the fiscal year 1869–70, and supposing the same (as we legitimately may) to have been raised by taxation under the existing tariff, was really and directly increased to at least $150,000,000 before the same was paid by the consumers of the taxed articles; and indirectly to a much larger figure. But of the practical effects of excessive and ill-adjusted taxation, the people of the United States at present need no illustrations. That they have been able to withstand the burden, National and State, imposed upon them for the past ten years, and yet live and prosper, is the most positive proof that can be afforded of the great natural resources and productive powers of the country.

Previous Efforts for the Reform of Existing Systems of Local Taxation.

In addition to general public discussion, the feeling of the necessity for reform in the existing systems of local taxation, has, moreover, found expression during the last ten years, in the attempt on the part of the Legislatures of at least five different States to provide for the work by the creation of boards or commissions, to whom the whole subject of inquiry and revision was committed, with instructions to report by bill or otherwise.

In this work the State of New York took the lead by the appointment, in 1862, by the Legislature, of a committee on the part of both the Senate and the House, of which Mr. James A. Bell of the

Senate was chairman, which committee subsequently (February, 1863) presented a report, accompanied by a bill and a digest of the mode and machinery of taxation then existing in the other States of the Union.* The example of New York was subsequently followed by the States of Pennsylvania,† New Jersey‡ and Connecticut,§ each of which during the years 1867 and '68 authorized the appointment of commissioners to take into consideration the subject of local taxation, with a view to the revision or amendment of existing laws; and all of which commissions, under instructions, submitted reports to the Legislatures of their respective States during the year succeeding to their appointment.

The State of Illinois during the year 1870 also authorized the State board for the equalization of taxes to prepare and present an entire new code of the levy and collection of taxes in that State.§§

It is also interesting here to note, that it does not appear that the Legislatures of the four States first mentioned, in even a single instance, subsequently paid any attention whatever to the work or recommendations of the commissioners they had thus authorized; a result which, coinciding with the record of a similar recent experience in respect to Congress and the national government, would appear to indicate the scope and object of all commissions appointed by legislative bodies to independently investigate financial or social questions, to be more properly the collection and intelligent presentation of facts, and the discussion of the practicability and direction of remedial measures, rather than the detailed elaboration of systems, with the expectation that the same are to be immediately invested by the proper authorities with the force of law. And, furthermore, any commission, such as above referred to, which properly discharges the duties assigned to it, is likely to occupy advanced positions, and

* Report on the State Assessment Laws by the joint select committee appointed by the Legislature of 1862. Transmitted Feb. 2, 1863. Albany: Weed, Parsons & Co., printers, 1863. Digest of taxation in the States; under three heads: 1. Mode and Machinery of Taxation; 2. Standard of Valuation; 3. Property liable to and exempt from Taxation. By Alfred B. Street. Published under the direction of the Joint Committee of the New York Legislature appointed to revise the Assessment Laws. Albany: Weed, Parsons & Co., 1863.

† Commonwealth of Pennsylvania. Report of the Auditor-General, Secretary of the Commonwealth and State Treasurer, on the Tax Laws of the State, made in compliance with joint resolutions of the Legislature. Approved April 12, 1867.

‡ Report of the Commissioners to revise the Tax Laws of the State of New Jersey, together with "an act concerning taxes." Submitted to the General Assembly Jan. 38, 1868. Charles S. Olden, chairman. Trenton, N. J., 1868.

§ Report of the Special Commissioners on the Subject of Taxation, with bill in form accompanying. N. H. Morgan, chairman. Printed by order of the Legislature. New Haven, 1868.

§§ An act for the Assessment of Property and the Levy and Collection of Taxes. Prepared by the State Board for the Equalization of Taxes in Illinois. Submitted to the Legislature January, 1871.

do more than merely reflect to the average of existing public sentiment; and as all experience has thus far shown that legislative bodies in the United States rarely, if ever, act in advance of public opinion, it would seem absolutely essential that the material of information should be first afforded to the public, with time for thought and discussion, before reform in the way of legal enactments can be reasonably asked for or expected.

During the year the subject of local taxation has also been brought prominently before the attention of the British public, through two agencies:

1. By the creation of a parliamentary commission, consisting of twenty-one members, of which the Rt. Hon. George J. Goschen, president of the poor law board, and a member of the cabinet, is chairman; and,

2. By the offer of a prize by one of the leading politico-economic societies of Great Britain (the statistical society of London), for the preparation of the best essay on the "subject of local taxation," the same to be presented and published early in the year 1871.*

The first report of the parliamentary commission above referred to, which was submitted in July, 1870,† shows, however, that no essential change in the existing system of local taxation in Great Britain was contemplated by the British government; the instruc-

*Prof. Stanley Jevons, in his address as president of the economic section of the British Association for the Advancement of Science at the annual meeting, September, 1870, thus alludes to the condition of local taxation in the united kingdom. He says: "I may point to local taxation especially as a subject requiring attention, even more than any branch of the general revenue. Until within the last few years the importance of the local rates was to a great extent overlooked, because there were no adequate accounts of their amounts. The returns recently obtained by the government are even now far from complete, but it becomes apparent that at least one-fourth part of the revenue of the kingdom is raised by these neglected rates and tolls. Their amount is more than equal to the whole of the customs duties, upon the reform of which we have been engaged for thirty years. Nevertheless we continue to allow those rates to be levied substantially according to an act passed in the reign of Elizabeth. The recent partial inquiry by a select committee has chiefly proved the extent and difficulty of the reform which is needed. Whole classes of property which were unrated three centuries ago are unrated now, and it will be a matter of great difficulty to redress in an equitable manner inequalities which have been so long tolerated. The subject is of the more importance because there is sure to be a continuous increase of local taxation. We may hope for a reduction of the general expenditure, and we shall expect rather to reduce, than raise the weight of duties. But all the more immediate needs of society, boards of health, medical officers, public schools, reformations, free libraries, highway boards, main drainage schemes, water supplies, purification of rivers, improved police, better poor laws, medical service; these and a score of other costly reforms must be supported mainly out of the local rates. Before the difficulties of the subject become even greater than they now are, I think the principles and machinery of local taxation should receive thorough consideration. At present the complexity of the laws relating to poor rates is something quite appalling and it is the herculean nature of the reform required which perhaps disinclines financial reformers from attacking it."

† "Report from the select committee on local taxation, together with the proceedings of the committee. Minutes of evidence and appendix. House of Commons. July 15, 1870."

tions given to the commission limiting their inquiries to the consideration merely of changes in the detail of assessments, and in the constitution of the bodies to whom the administration of the rates is locally intrusted.*

PRESENT NECESSITY FOR REFORM IN THE EXISTING TAX SYSTEM OF NEW YORK.

But whatever may have been the reasons which led the Legislature of the State of New York, in 1862, to the conclusion that an inquiry, with a view to the revision of the existing tax system, was then expedient, the reasons which *now* exist for the authorization and prosecution of a similar work, are far more imperative. In 1862, the aggregate valuation of the property of the State for tax purposes being $1,449,303,948, the aggregate of all taxes was $19,456,288, while the average rate was 1.342. In 1869, however, the aggregate valuation being $1,860,120,770, the aggregate of taxation had risen to $46,161,-531, and the average rate to 2.482. In other words, if we take a period of ten years, viz., from 1860 to 1869 inclusive, we find that, while the valuation of the property of the States for tax purposes has increased during that time but 30.3 per cent, the aggregate of the sums raised by taxation has increased during the same period 140 per cent, and the average rate eighty-five per cent. Or, to state the case differently, the aggregate taxation of the State, from 1845 to the present time, has increased from about three-fourths of one per cent upon the dollar of valuation, representing a tax of $4,170,524, to one three-tenths in 1860, representing a tax of $18,956,024, and two four-tenths in 1869, representing a tax of $46,161,531. Estimated *per capita*, the aggregate of State taxation, which in 1860 was 4.88 cents, has since increased until it is now (1870) equivalent to $11.55 for each man, woman and child that make up the entire population of the State.

Within the last few years, moreover, such changes have been made in the tax systems of several of the States contiguous to New York, either by special enactments, variations in the methods of valuation and assessing of property, or a diminished necessity for the raising

* "*Ordered*, That a select committee be appointed to inquire and report whether it be expedient that the charges now locally imposed on the occupiers of ratable property, should be divided between the owners and occupiers, and what changes in the constitution of the local bodies, now administrating rates should follow such division.

Ordered, That it be an instruction to the committee to inquire further into the proper classification of rates with a view to determine their proper incidence upon the owners or occupiers of such ratable property. House of Commons, Feb. 21, 1870."

of revenue, as to place New York relatively at great disadvantage, and urgently call for the adoption of measures on the part of the State, which will at once prevent the arrest of its development and the deviation of its legitimate capital, population and enterprise.

Thus for example, the Legislature of the State of New Jersey, during the year 1869, exempted, in certain of the counties and cities of that State which lie contiguous to New York, all mortgages from taxation, by a provision of law which reads as follows: "*And all mortgages upon estates, chattels or personal property, taxable by law, within said counties of Hudson, Union, Essex and the city of Brunswick, Middlesex county and the county of Passaic, except the townships of West Milford, Pompton and Wayne, for State, county, township and city purposes, shall be exempt from taxation, when in the hands of any inhabitant, corporation or association, residing or located in said counties or cities.*" *Approved April* 2, 1869; *Laws of New Jersey* 1869, *page* 1225.

It is therefore obvious that the State of New Jersey, by the action of its Legislature, has not only removed, in the districts and cities above specified, all obstacles in the way of the retention within its own borders of so much of the capital of its citizens as tends to investment in bonds and mortgages, but has also offered a strong inducement to the inhabitants of the State of New York, and especially of its great commercial city, to change their residence and become citizens of New Jersey; while New York, on the other hand, by continuing its taxes on bonds and mortgages, in fact reduces the rates of interest on this species of investment to a rate less than that paid by government, and many other securities, and thus limits and obstructs the flow of capital in that channel, which, perhaps, more than any other contributes to small local enterprises; gives employment and homes to the working classes of its population, and augments the amount of visible, tangible property available for taxation for State purposes.

In Pennsylvania, furthermore, another of the States which is especially brought into competition with New York, *personal property*, under a system of taxation which is in many respects far more liberal than that of any other State in the Union, is either wholly exempt from taxation, or is taxed to so small an extent as, in comparison to New York, to practically amount to exemption; and, although Pennsylvania is guilty of the apparent barbarism and incon-

sistency of imposing a tax of four cents per ton on the anthracite coal mined and carried by transportation companies within her borders, while at the same time she demands protection from the national government against the competition of other coal, the product of foreign countries, yet, owing to the monopoly which the State possesses of this article, the tax imposed on it is paid, in the main, by citizens of other States, rather than by her own population. *

In forty-three out of the sixty-five counties of Pennsylvania, "all mortgages, judgments, recognizances, or moneys owing upon articles of agreement for the sale of real estate," are exempt from all taxation, except for State purposes; while the maximum of tax at present levied by the State upon this species of property, in common with all other moneys loaned at interest, is only *three-tenths of one per cent.*

Shares of national banks, located within the State of Pennsylvania, and of banks and savings institutions incorporated by the State, are taxable for State purposes at the rate of *three-tenths of one per cent* per annum, and are also liable to taxation for school and other local purposes at the same rate as is imposed on other moneyed capital. But in case any bank or savings institution shall elect to collect from its shareholders a tax of one per centum on the par value of all its shares, and pay the same annually into the State treasury, then all the shares, capital and profits of such banks shall be exempt from all further taxation under the laws of Pennsylvania. As a tax of one per cent on the capital of the national banks alone, of Pennsylvania, exclusive of all State banks and savings institutions, would have yielded a revenue to the State in 1869 of over $500,000; and as only $187,000 was paid from this source during that year into the State treasury, it is evident that the actual taxation on the banks of Pennsylvania was much less than one per cent; and in fact in all the principal money centers is known to have been but the minimum provided for by law, viz., three-tenths of one per cent.

* It is proper to here state that the tax on anthracite coal was imposed by the State of Pennsylvania as a compensation for the abandonment in 1867 of a tax on tonnage carried from a point within to a point without the State; which tax, by a decision of the courts, was declared to be in violation of the Constitution of the United States and released several of the great mining and transportation companies supplying coal to the northern markets from a tax which was paid by similar companies, operating exclusively within the State. But Pennsylvania, with a shrewd regard for her own interest, was careful not to impose this tax upon "bituminous" coal, of which the State has not a monopoly and the incidence of which might therefore fall upon her own citizens, and work to the advantage of foreign produces; and she also exempted the companies concerned, from all tax upon the anthracite coal consumed in their own business.

The amounts of revenue derived by the State of Pennsylvania from the tax on anthracite coal in 1869 was $159,577; while the amounts of revenue derived by the national government from the tariff on all imported coal for the fiscal year 1869–70, was $526,190.

The revenue of the State, for State purposes, is derived mainly from the following sources: 1st. A tax of one-half of one mill on each one per cent of all dividends which may be declared by the corporations of the State, except banks, savings institutions and foreign insurance companies; and in case that no dividends are declared, then a tax of three mills on the valuation of the stock. Building associations, plank-road and turnpike companies, are not liable to any tax when no dividends are declared. The receipts to the State treasury from this source, for the year 1869, constituted the largest single item of the State revenue and amounted to $1,037,-172. 2d. Taxes on tonnage carried over the lines of the various transportation companies operating exclusively within the State, viz., *two* cents on the product of mines, *three* on the product of forests and agriculture, and *five* on manufactures and general merchandise. The receipts from this source for the year 1869, and certain commutations of the same, amounted to $659,900. 3d. Taxes on personal property which are made up mainly of the following items: Money at interest, furniture, horses and cattle, three-tenths of one per cent; pleasure carriages, one per cent; gold watches, one dollar; silver watches, seventy-five cents; other watches fifty cents. The inconsiderable nature of these taxes may be inferred from the circumstance that the whole revenue derived from the same for the year 1869, was $454,873. 4th. A tax of three-fourths of one per cent on the gross receipts of every transportation company of the State liable to the payment of a tonnage tax. The income from this source in 1869, was $373,420. 5th. A tax of five per cent on every dollar of interest paid by the corporations of the State to its bondholders or creditors; in lieu of which the principal sums from the interest of which the said tax is deducted, are exempt from assessment and taxation for State purposes, as personal property. The revenue from this source of 1869, was $340,816. 6th. A tax of three per cent on the annual net earnings of every private banker, broker, incorporated banking and savings institution, express company and all other corporations of the State, except those paying a tonnage tax, incorporated banks and insurance companies, and foreign insurance companies. The revenue from this source for 1869, was $310,895. 7th. A license tax of five hundred dollars per annum on every foreign insurance company doing business in the State; and a tax of three per cent on the entire amount of the premiums or commissions received. The receipts from this source for 1869, were

$226,226. 8th. Taxes on the enrollment of laws, by which is to be understood a taxation imposed on the enrollment of all acts of the Legistature passed for the benefit of private parties; the same varying from $1,000 on the incorporation of banks with a capital of $1,000,000; two hundred dollars on the incorporation of manufacturing, mining or oil companies; and one hundred dollars on transportation companies; down to thirty-seven dollars for acts of divorce and miscellaneous private bills for claims, relief, etc. The revenue from this source for the year 1869, was $21,000. 9th. Taxes on the emoluments of offices, by which is to be understood a tax of two per cent on so much of the salary or emolument of offices of the State, or corporations created by the State as is in excess of two hundred dollars. The revenues from this source for 1869, was $16,644. 10th. Retailers' licenses, $422,273. 11th. Tavern licenses, $289,555. 12th. Other licenses, *i. e.*, amusements, peddlers, restaurants, etc., $69,800. 13th. Taxes on collateral inheritances, $227,328. 14th. Taxes on wills, writs and deeds, $99,000. 15th. Auction duties and commissions, $72,000; the sum total of State revenue for the year 1869, from the above and a few other miscellaneous sources, being $5,096,679, as compared with $8,138,000, the State revenue of New York from taxes for the corresponding period; or in respect to population, $186 $\frac{7}{10}$ per capita in Pennsylvania, as compared with $186 $\frac{2}{10}$ per capita in New York. But the manner in which taxation is apportioned in the State of Pennsylvania, whether intentionally or accidentally, so as to enhance in the least degree the cost of both capital and of production, is better shown by an exhibit of the actual workings of the system for the years 1869 and 1870, in the two great financial and industrial cities of the State, viz., Philadelphia and Pittsburg.

Taxation of Philadelphia.—In the city of Philadelphia, for the year 1870, the taxation for all purposes other than for State taxes was assessed and collected on the following valuation:

Real estate	$470,851,800
Personal property	8,188,873
Total	$479,040,673

The aggregate valuation of these two items of real and personal property was subdivided as follows:

REAL ESTATE.

	Valuation.	Rate.	Tax.
City proper	$426,783,036	$1.80 per hundred.	$7,682,094
Suburban	24,649,289	1.20 per hundred.	295,791
Farm	19,419,475	90 per hundred.	174,775
Total valuation	$470,851,800	Total tax	$8,152,660

The taxation on the valuation of personal property of $8,188,873, was assessed on the following items exclusively:

	Valuation.	Rate.	Tax.
Furniture	$5,917,426	$1.80 per hundred.	$106,513
Horses and cattle	1,750,873	1.80 per hundred.	31,515
Pleasure carriages	520,574	1.80 per hundred.	9,370
Total valuation	$8,188,873	Total tax	$147,398

The whole city revenue, therefore, from direct taxation for the year in question was $8,300,061, to which may be added the sum of $892,000 for water rents, and about $125,000 for rents of markets, wharfs, fees, and sundry small licenses. In addition to the above the city officials collected for the State during the same year a taxation of $135,840, which was assessed on the following items and valuations and at the following rates:

	Amount.	Rate.	Tax.
Money at interest	$28,856,137	3 mills.	$86,568
Furniture	5,917,425	3 mills.	17,752
Horses and cattle	1,750,873	3 mills.	5,252
Carriages, pleasure	520,574	1 per cent.	5,205
Carriages to hire	38,305	3 mills.	114
Emoluments of office	376,240	2 per cent.	7,524
Gold watches, number	11,939	$1 00	11,939
Silver watches, number	903	75 cents.	6,77
Other watches, number	49	50 cents.	24
Cars (passenger), valuation	260,650	3 mills.	781,50
Total valuation	$37,732,096	Total State tax	$135,840

Taxation of Pittsburg.—In the city of Pittsburg, with a population of 86,255, the municipal taxation for all purposes for 1870, except schools, was returned at $699,700, and derived mainly from the following sources:

1. A tax of eleven mills on the valuation of all property taxable for all State and county purposes, except such portions of the city as are designated as "rural," in which the tax is as two-thirds of said rate, or at seven and one-third mills on each dollar of valuation. This tax affords a revenue of $184,000.

2. A tax termed the "business tax," or a tax upon the sales and business of the city, which is assessed as follows: *Ten mills* on the dollar of all sales of retail liquor dealers, and on the commissions of all forwarding and commission merchants and merchandise brokers; *one and three-fourth mills* on the sales of all goods, wares and merchandise other than liquors at retail; and on the sales of all goods at auction, except sales of real estate, stocks and steamboats, on which

the tax is at the rate of one mill; *one half of one mill* on each dollar of the yearly business of brokers, banks and banking institutions; *one and three-fourth mills* on the yearly receipts of insurance, express and telegraph companies, and *five mills* on the dollar of the yearly receipts of persons engaged in keeping bowling alleys or billiard tables. The receipts from these taxes for the year 1870 were returned at $200,000.

3. Water rents, $140,000.

4. For the payment of indebtedness of the city, a tax of three mills on all property taxable for State or county purposes, $42,000.

5. Rent of wharfs and markets, $66,000.

6. Vehicle licenses, $18,000.

7. Mayor's office, $24,000.

8. City gauger, $5,000.

With this exhibit, therefore, of the amount and apportionment ot taxation in Pennsylvania and its principal cities, it cannot be doubted that great and, substantial advantages are offered to capital seeking investment in real estate, mortgages, or the business of manufacturing, mining or shipping, by this State over and above any which are afforded under the existing laws of the State of New York, and in the event of free banking under national laws (a question merely of time), and with the circumstances of relative State taxation remaining unchanged, it cannot moreover be a question in what State, bank capital, especially if intended to be used in connection with circulation, will inevitably tend to concentrate. The results of the census of 1870 would also indicate that the liberal system of taxation existing in Pennsylvania, as compared to that of New York, had already began to exercise a marked influence upon the comparative growth of the two States—the comparative growth of New York, the State richest in capital, the most numerous in population, the "*entrepot*" of the majority of the foreign commerce, and the center of the commercial exchanges of the country, having been much less for the last decade than that of Pennsylvania. Thus, for example, while the latter State, starting in 1860 with a population of 2,906,215, has gained 609,778 in population, the State of New York, starting with a population of 3,880,735, has gained only 483,640.

On this point, also, the chairman of the Board of Revision of taxes of Philadelphia, adds his testimony in the following extract from a letter addressed to the commissioners. He says: "I think you are right in your conclusion that we owe much of our prosperity to the

freedom of capital from taxation; and I have argued with our people, ever since it has been my province to execute our tax laws, that Philadelphia owed her prosperity mainly to that, and that her manufacturers prospered under her laws notwithstanding our citizens complained of heavy taxes. It is natural that New York city (being the chief port of the country and the importing center) should attract most of the mercantile capital from her (being only 100 miles distant), just as Newark and other cities are more or less affected in some instances. But we have prospered in other branches of industry; and the fact that in each of the years 1869 and 1870, more than 4,500 dwelling-houses have been erected, which are occupied as soon as they are finished, is evidence of that prosperity."

Again, attention is also called to the fact that in Lower Canada, which borders upon New York upon the north, there is comparatively no taxation upon bank capital, money at interest, manufacturing establishments, shipping or other personal property;* and that the two neighboring States of Maine and Vermont, with a view of developing their own resources, increasing their wealth, and attracting population, have each, within the last two years, enacted laws to exempt from taxation, for a period of years (in Maine *ten*, and Vermont *five*), manufacturing establishments of whatever character, together with all machinery and capital employed in operating the same.†

It is also to be remembered that the State of New York is yearly becoming less and less of a distinctively agricultural and more of a commercial and manufacturing State; and that, through the inclusion within its borders of the harbor and city which is the *entrepot* of two-thirds of all the foreign commerce of the country, the State

* For a detailed exhibit of the system of local taxation in Montreal and the Province of Quebec, reference is made to the appendix to this report marked A.

† In Maine the exemption of manufacturing establishments is made to depend upon the consent of the towns where the same are located. In Vermont the exemption has been made absolute by the State for a period of five years from the date of the commencement of operations. The following is the Vermont act in question:

"An act in amendment of an act entitled 'An act to encourage manufactures,' approved November 16, 1869.

"SECTION 1. Section 1 of an act entitled 'An act to encourage manufactures,' approved November 16, 1869, is hereby amended and construed so as to read as follows:

"'All manufacturing establishments erected after the 16th day of November, 1869, and all such as were then in process of construction and not then completed, and all the machinery and capital used for operating the same, together with all such machinery hereafter put into buildings heretofore erected but not now occupied, or not now in condition for occupation, and all the capital used for operating the same, shall be exempt from taxation for the term of five years from the time of commencing to operate the same, where the amount of capital actually invested shall not be less than $1,000; but all property so exempted shall be appraised by the listers each year, and its valuation shall be stated upon the grand list, and the exemption from taxation, and the time when such exemption will terminate, shall be noted against it.'

"SEC. 2. This act shall take effect from its passage.

"Approved November 22, 1870."

itself, far more than any other, is brought directly in contact with foreign countries and with their systems of taxation; so far especially as these latter affect the cost and movement of money capital; the development of shipping, manufacturing and mining, and the cost of storage and distribution of merchandise. And in reviewing the respective systems, we find that there is, upon the one side, as nearly perfect freedom from inquisition and restriction as the wants of local government and society will permit; and on the other as cumbersome, vexatious and ineffective a system as accident or the force of circumstances could well originate.

Thus, for example, in Great Britain, France, Belgium, Prussia and Holland, there are no direct taxes on personal property; and in all of these countries special care is taken that the incidence of local taxation shall not increase the cost of production, especially of manufacturing, or of the commercial transactions involved in the movements of the finished products of industry to a market; but, in New York, in common with all the other States, except Pennsylvania, it has thus far been considered desirable rather than otherwise to impose upon the capital especially employed in manufacturing as large a proportion of the burden of local taxtion as practicable. It is, therefore, evident that, to the extent of this difference in the incidence of taxation, the manfacturers in New York must enter a foreign market at a disadvantage, for which there can be no direct compensation; while, as regards his own, or the home market, he has need of a corresponding measure of protection, either in the way of increased expenses of transportation or a rate of tariff, in order to hold his own against his more favored foreign competitor. How this condition of inequality operates as a bar to State and national progress conjointly may be practically shown by various examples.

Let us suppose the projection of a new line of steamships to run between the city of New York and Europe in competition with existing lines, now controlled by foreign capitalists and registered under a foreign flag. If the nationality of the company is to be American, and its location New York city, the State, city and county would have levied, or have authorized the levying, during the past year, on the whole accessible capital or property of the company, in the form of vessels, wharves, storehouses, machine shops, offices and floating capital, a tax of $2.27.

Beyond this, the national government would have imposed an average tax under the tariff, on all articles of foreign growth or impor-

tation used in the vessels of the line, of forty-eight per cent; on the profits or dividends of the company (if perchance there should be any), an income tax; on all tickets for passage, a tax varying from fifty cents to one dollar and a half; and until quite recently would have also taken two and one-half per cent on all gross receipts from both passengers and freights. If, on the other hand, the *situs* of the company is made foreign, and its location fixed at Liverpool, the whole amount of local taxation to which the company would have been subjected would be merely an assessment to the extent of from ten to twenty-five per cent on the rental value of the premises occupied either as offices, storehouses, or machine shops. Beyond this the British government would have levied in the year 1870 an income tax on the profit of the individual stockholders or owners, of *four* pence on the pound sterling, equivalent to one and two-thirds per cent, and omitting all other forms of direct taxation, would have allowed all articles subject to taxation either under the excise or tariff, such as distilled spirits, teas, sugars, coffee, wines and tobacco, which may be required for use on board the steamer in question, to be taken from bond free of duty. The difference in the return on the investment, therefore, growing out of the difference merely in the fiscal systems recognized in the different locations specified, would be of itself sufficient to afford to the foreign capitalist a dividend on his stock nearly or quite equal to the ordinary rate of European interest on the capital employed; while to the American investor, the disadvantage would have an expression at least twofold greater through an increase of expenses and a diminution of profit which can be traced directly to a system of taxation and currency, which has enhanced the price of everything that has entered into the steamer, from the laying of her keel to the coal that feeds her engines. With competition, therefore, with foreign nations, on terms of equality, being thus from the very outset by our own acts rendered impossible, it is not to be wondered that no American steamship sails to-day from the port of New York, on any transatlantic voyage, and that there is not now in any commercial city of the United States hardly a single forge fire alight which could *at once* weld and fashion a shaft adequate for the necessities of a first-class ocean steamer. It is also interesting to note that during the present year the Legislature of Pennsylvania has incorporated a transatlantic steamship company, having its American *situs* in

Philadelphia, in which all the property of the company, stock and bonds included, is specifically exempted from all taxation.

If we select another example, the manufacture of cotton in Great Britain and New York respectively, we find that in the former country, the incidence of all local or other direct taxation extends only to the rental value of the buildings used for the reception of machinery or the transaction of other details of the business of manufacturing, and does not in any way regard the value of the machinery which may be placed in such buildings, or the capital employed in its workings. On the other hand, in New York in common with all the other States, except Pennsylvania, the incidence of local taxation falls upon everything connected with the business of cotton manufacture that is accessible, viz., buildings, land, capital and machinery, and is, moreover, not unfrequently duplicated; the land, machinery and buildings being taxed to the company or corporation at the place where they are situated, and the stock to the stockholders at the place of his residence or domicile.

In one instance (and that not exceptional) brought to the notice of the commissioners, the aggregate of these local taxes imposed on a particular corporation located in one of the New England States, amounted, in 1868, to over *four* per cent upon the whole capital invested, and in years previous the aggregate was reported as considerably in excess of this figure.

But vicious as this system is, upon its face, its effects, contrasting our domestic with foreign systems of taxation, cannot be fully appreciated until we take into consideration the fact that the capital required to build a cotton or woolen mill in the United States is about double the amount required in Great Britain, or upon the continent of Europe. *Four* per cent, therefore, on the capital of a cotton mill in the United States, represents *eight* per cent on the same productive power in Great Britain, Belgium or Germany; a rate which is almost double the average rate of interest in the latter countries. It is therefore clear, that the manufacturers of the State of New York, engaged in cotton, woolen or other industries similarly affected, are now so burdened by the acts of their own domestic legislation, that they absolutely need some measure of compensation, freight or tariff protection, in respect to this one item, to enable them to compete successfully in their own markets against foreign competitors; and if the neighboring States were to adopt the system of local taxation existing in Pennsylvania, or a more liberal one, and New York were to adhere

to her present system, manufacturing industry, to a very great extent, would either be obliged to abandon the State, or force a repeal of the existing laws.

Imperfections and Anomalies of the Existing Systems of Local Taxation.

But apart from any necessity for reform in the system of local taxation in New York, growing out of diversities in the systems adopted by other commercially competitive or contiguous States, which may be remedied by compensating legislation; and apart from the differences through varying debts and expenditures in the burden of annual taxation to be of necessity sustained, which last may, in a degree, be remedied by more economical administration, and by adjusting the load to be carried in such a way as that it shall fit squarely upon the back of the body politic, rather than paralyze by pressure on the neck, or suspension from the extremities; there is a further imperative need of inquiry and reform from the inequality and inadequacy of the existing system to accomplish the work assigned to it. In short, it needs but the most superficial examination of the prevailing system of local taxation in the State of New York to abundantly satisfy, that whatever it is of to-day, it has grown up in common with the tax systems of all the other States, under the pressure of necessity, and mainly under the influence of accident and circumstance. And it does not appear, that in a single instance in which previous attempts at reform in State taxation have been made, that those intrusted with the work have ever proposed to themselves anything more than to amend the administration of the laws imposing taxation as they found them, and to include a larger number of items than before in the range of valuation and assessment; and that no inquiry was either instituted or contemplated in respect to the influence of local taxation on the cost of production, on the growth and development of the State, or the equitable distribution of the annual surplus of production over consumption among the masses.

The illustrations which may be given in support of these positions constitute some of the most curious of the contributions which have ever been made to the history of political and social economy. The exemption of bonds and mortgages on real estate from taxation in a majority of the counties in the State of Pennsylvania, and the retention of the tax upon such instruments in others, has been referred to, but the history of the origin of this inequality through what may be

termed "accident" is yet to be related. It is reported in this wise: A single county in that State, a few years ago, in the first instance, finding its local development obstructed through a deficiency of loanable capital, which deficiency in turn was occasioned by a taxation which reduced the rate of interest on such capital when lent on mortgages below what could be obtained by investment in other securities, petitioned the Legislature for the exemption of mortgages, executed within the county limits, from all taxation. The petition being acceded to, other counties, through their representatives, were, on motion, included in the privilege; and as the bill finally passed, all the counties at that time seeking exemption were allowed it, while in respect to those which either did not express an opinion on the subject, or did not favor exemption, the taxation remained as before; and thus the present general rule of administration in Pennsylvania, in place of being the result of a general law, became the exception on the statute book.

Again, there would seem to be no more fundamental principle in the adjustment and assessment of taxes in respect to one and the same State or community, than that the law or tax, whatever it may be, shall be uniform in its application to all; a principle confirmed in the first article of the eighth section of the Constitution of the United States; the one conferring power on Congress to "lay and collect" taxes, which expressly provides "that all duties, imposts and excises, shall be uniform throughout the United States." In short, except where arbitrary powers have been exercised by despotic or half civilized rulers, it would be difficult to find exceptions to this rule in the history of other countries; and yet, in our own country, we have more than one illustration and evidence to the contrary. In the case derived from the laws of Pennsylvania, just referred to, the occurrence was evidently the result of accident and circumstance rather than of design; but in the case of New Jersey, which, within the last two years, has not only singled out certain counties, but even particularized certain cities and towns for exemption from a taxation made applicable to all the rest of the State, the design of the resulting inequality is not only apparent but admitted.

Again, an inconsistency in relation to assessments for taxation exists in the laws of New York, for which it would be difficult to find a counterpart in the legislation of any other State or country. Thus, while the general law of the State requires that personal property, in the nature of mortgages, debts, money at interest, choses in

action, etc., shall be held to follow personal residence, a specific law* enacted with a view of reaching certain foreign proprietors, provides for exactly the reverse practice in respect to notes and mortgages executed within the State and held by foreigners.

An act of the Legislature of Illinois, passed April 16, 1869, is also especially worthy of notice in any review of the anomalies and inconsistencies of American taxation. This act provided that whenever any county, township, incorporated city or town, shall have created a debt to aid in the construction of any railway, it shall be the duty of the State Treasurer to place to the credit of such county, township, etc., all the State taxes received from such county, township, etc., derived from the increased valuation of property over and above the valuation for the year 1868, and apply the same to the payment of the bonded railroad debt of such county, township, etc. Thus, for example, if the valuation of property in a given county or town, in 1868, was $1,000,000, and in the year 1870 $1,500,000, then the law prescribes that all State taxes collected upon the additional $500,000 shall be returned to the locality to pay its railroad indebtedness. On the other hand, those localities which are not so fortunate as to have railroad debts, will meanwhile continue to pay, in common with the rest of the State, on their increased valuations; but the payments thus made will be used to defray the general expenses of the State government, and not for the exclusive benefit of those on whom the tax is levied; an arrangement which, in fact, makes prudence and economy or a deprivation of railroad accommodations an occasion for disproportionate taxation, and offers a bounty for the incurring of indebtedness.

Irregularities in Methods of Valuation.

Coming next to the consideration of the rules adopted for the valuation of property, both real and personal, for taxation, the irregularities generally — Massachusetts and the city of Philadelphia possibly excepted — will be found to be so great and so extreme that the word *chaotic* is the only term that can properly be used to charcterize the systems or the practice.

As has already been stated, the valuation of the property of the State of New York for taxation increased from 1860 to 1869, inclusive, from $1,419,297,520 to $1,860,120,770, or at the rate in ten

* "All debts owing by inhabitants of this State to persons not residing within the United States for the purchase of any real estate, shall be deemed personal property, within the town or county where the debtor resides, and as such shall be liable to taxation in the same manner and to the same extent as the personal estate of citizens of this State" Laws 1851, ch. 371, § 1.

years of about thirty-one per cent. In Massachusetts, the valuation increased during the same period forty-eight per cent; in Connecticut, 30.5 per cent; in Rhode Island, from 1861 to 1868, 54.9; while in New Jersey the valuation increased thirteen per cent in the three years from 1866 to 1869, inclusive. It is thus evident in the outset that unless we suppose New York to have increased in wealth and population at a less rapid ratio than the States which are contiguous to her, an assumption which cannot be admitted, the existing valuation of the State is comparatively incorrect and erroneous.

VALUATION OF REAL ESTATE.

In New York the State tax is apportioned among the counties on the basis of their respective valuations of real estate, and the same rule prevails among the towns of the different counties. Hence arises the double competition between the assessors of counties in the aggregate, and of the towns in each county, for the lowest possible valuation. Having completed his official labors, each assessor in the State subscribes an oath of which the following is the material portion:

"We do severally depose and swear that we have set down in the foregoing assessment roll all the real estate in ———, according to our best information, * * and that we have estimated the value of said real estate at the sums which a majority of the assessors have decided to be *the full and true value thereof, and at which they would appraise the same in payment of a just debt due from a solvent debtor.*"

And the law further provides "that every assessor who shall willfully swear false in taking and subscribing said oath, shall be guilty of and liable to the penalties of willful and corrupt perjury." Let us now see what are the acknowledged facts in respect to the valuation of real property in New York, and some of the other States, where a substantially like oath is made imperative.

In some instances in New York the valuation of real estate for taxation is reported as low as twenty per cent of its real value. In a majority of cases in the country the rate varies from twenty-five to thirty-five per cent, and rises in the cities to fifty and possibly sixty per cent as a maximum. In short, there cannot probably be found a single instance in the whole State, unless possibly in the case of certain unoccupied lands, the property of non-residents, where the law, as respects the valuation of real property is fully complied with, and

where the oaths of the assessors are not wholly inconsistent with the exact truth. *

Of numerous examples of irregularity or inadequacy of assessment brought to the attention of the commissioners, the following may serve as illustrations:

In 1842, the real estate of Oneida county was assessed at $9,935,209; and in 1869, at $14,581,949, showing an increase in value in twenty-seven years of only $4,656,740. In 1865, the value of live stock in Oneida county, as returned in the census of the State, was $4,254,-587.50, and the value of the farms $26,944,185, making a total value of farms and live stock of $31,198,772; and, in 1865, there was in Oneida county $3,542,925 capital invested in cotton, woolen, paper, grist and flouring and lumber mills, and in tanneries and iron furnaces.

Oneida county has 735,453 acres of land, the average assessed value of which is only about twenty dollars per acre, and this valuation includes the real estate of the cities of Utica, Rome, etc. The value of the dwellings alone in Oneida county, in 1865, according to the census of New York, was $14,589,715, being more than the assessed value of all the real estate of the county in 1869.

Westchester county has 278,827 acres of land, the assessed valuation of which, with buildings, etc., in 1869, was $45,602,201, or at the rate of $163 per acre. The opinion of an expert in such matters, however, is, that any valuation of the real estate of this county less than $150,000,000 would be low; the county, as is well known, being bounded in part by the waters of the Hudson and the sound, and traversed by the Hudson River, Harlem and New Haven railroads, and containing many towns and villages in which real estate commands several thousands of dollars per acre; or even by the lot. According to the census of 1865, the value of the dwellings alone in Westchester county was returned at $36,755,440, and the value of the farms at $37,587,333.

* "I hold that under our present system there is no greater manufactory of perjury on the face of the earth. What is the habit throughout the entire length and breadth of the State of New York? Towns are fighting towns, through their assessors, to get at the lowest possible point the assessment of their real and personal property, for the purpose of going up to the board of supervisors, and in the taxation of the county charges, to have their particular towns as low as possible in the roll of taxation. That engenders a necessity on the part of counties to act in the same way; and you find the counties cutting down their assessment rolls in the equalization of valuation of their property as low as possible, so that when they come up here to Albany and appear before the State equalization board, to divide the State taxation, they shall pay the least amount of tax they possibly can. There is no attempt on the part of the assessors and supervisors to get at the honest, actual value of the property of the country, but there is an attempt to get it at as low a point as possible, in order to get an advantage over neighboring towns and counties in the operation of dividing the taxes of the county and State." *Speech of Hon. Thomas G. Alvord. Debates New York Constitutional Convention*, 1867-68; *vol.* 3, *page* 1905.

In 1858, the valuation of the real estate of *Dutchess county*, one of the richest agricultural counties of the State, was $21,169,721, and in 1869, $20,927,018, thus showing a decrease in eleven years, of $242,703. Dutchess county has 486,837 acres of land, assessed for taxes within a fraction of forty-three dollars an acre, and this includes Poughkeepsie, Fishkill, Rhinebeck, etc., where real estate is sold for thousands of dollars per acre. The census cash value of the farms in this county, in 1865, was $30,342,547, and the cash value of the dwellings $13,845,635, making a total of $44,188,182.

In *Erie county* the valuation of real estate, in 1852, was $31,964,-856; and, in 1858, $43,249,639; showing an increase in six years of $11,284,783. In 1870 the valuation of real estate is returned at $43,392,351; showing an increase in twelve years of only $142,712. According to the State census of 1865, the value of farms in Erie county was $25,314,744, and number of acres or improved land in the county, 407,302. Value of the dwellings in the county, $5,695,-386; value of the dwellings in the city of Buffalo, $28,918,891. The value of the dwellings in the city of Buffalo, in the census return of 1865, was only $1,985,244 less than the assessed value of all the real estate of the city in 1870.

In *Monroe county*, one of the richest and most populous counties of the State, the valuation of the real estate in 1858 was $24,367,-165; and in 1869 $23,066,624; thus showing a decrease in eleven years of $1,300,541. The value of the farms of this county, by the census of 1865, was returned at $20,415,992, or at an average of about $77 per acre. The value of the buildings of the county, outside of the city of Rochester, was returned in 1865 at $6,830,967, and of the city itself at $15,861,760; making a total of $22,692,727, or only $368,897 less than the entire value of the real estate of the county, including the city of Rochester.

Similar illustrations might be obtained from the valuation and census statistics of many of the other counties of the State; but the above are believed to be sufficient to show the nature of the valuations of real estate which at present characterize the existing tax system of the State of New York.* But that this state of affairs

* The following extracts from statements made by delegates from various parts of the State to the constitutional convention of 1867-68, when the subjects of valuation and assessments were under consideration, will also serve as further illustrations of the imperfections and inequalities of the existing system:

"The gentleman has said that the present law is abundantly sufficient. I ask him to point me to a single board of assessment anywhere in this State who begin to live anywhere near to the requirement of law. They cannot do it. It is an impossibility for them to do it. They can only estimate

is not peculiar to New York, is made evident by the following extract of a letter written to the commissioners by an official of a neighboring State.

"The practice on the part of assessors in nearly every town in the State, has been to make oath that the real estate has been appraised by them 'at such sums as they would appraise the same in payment of a just debt due from a solvent debtor;' while current sales showed

the value of the property arbitrarily, putting it as high as they please, and then leave it to individuals themselves to come forward and modify it; but rather than subject themselves to that mode of correcting these assessments, they go through the State, putting property down to the lowest possible point that their consciences will permit (in order that they may not be worried by the importunities of parties to reduce taxation), which they are generally obliged to do upon the representations of the parties, since their own estimate is but an arbitrary guess." *T. G. Alvord, 22d District Debates Constitutional Convention, vol. 3, p. 2311.* "I am well aware that our system of taxation is a gigantic fraud in the great commercial city of New York, and that many of our largest property holders know that every year, in the strict eye of the law, they are actually in complicity with fraud on the part of assessors and collectors in that city." *A. J. H. Duganne, New York city, Delegate at Large, Ibid. vol. 3, p. 2314.* "In 1859 there was a law passed by the Legislature of this State, which authorized any town in any county which conceived itself to be aggrieved by the equalization of their board of supervisors, to carry their case to the Comptroller. Under that law, but one case has arisen in this State, and that arose this year, in the county of Jefferson. The town conceived itself to be aggrieved by the equalization; and the Comptroller referred the matter to an individual residing in that county. He did the work effectually. He placed in one column the actual cost value of the real estate of every town in that county, and the value at which, as estimated, it was sold from day to day. In the other column he placed the assessed value of the property of each town in that county. *The lowest rate of assessment was at twenty-two and one-half per cent; the highest was forty-five per cent;* the average was thirty-three and one-third per cent. The assessment was not correct, and the town was relieved. It was shown that the board of equalization in making up its account, *had taxed the town at forty-five per cent, whereas they had put part of the county as low as twenty-two per cent.* There is a county in this State, in the vicinity of the county in which I live, which, in point of population, in geographical area, is larger than the county from which I am, which has added within the last ten days, to its return of assessments about eleven millions of dollars by the board of equalizers; and yet it now stands almost one-third less in valuation than my county. Every one who knows the situation of those two counties knows that the one which is larger in point of population and larger in area, has vastly more wealth than my county." *T. G. Alvord, Ibid., vol. 3, p. 2321.* "I know the fact that real estate is assessed unequally. In some localities it will not exceed one-fifth of its value, and in others, one-third, others, one-half to two-thirds." *A. F. Allen, Delegate 32d District, vol. 3, p. 1901.* "I had supposed the present law required that all property be assessed its actual value; but the practice is much worse than the principle. The practice, so far as I understand it, is to assess real estate at about one-third of its value, and to assess personal property, so far as it can be discovered, at nearly its full value; so that really the honest man is oppressed, while the ingenious rogue goes scott free." *Jas. A. Bell, Delegate from the 18th District, chairman of Joint Committee of Legislature. 1862-3, on Revision of Tax Laws; Debates Constitutional Convention, vol. 3, p. 1909.* "I believe that it is difficult to conceive of a system of distributing the burdens of a civilized community so that it would operate more gross injustice than the actual system of taxation as it now exists among us. This system is not only grossly unjust, but it is demoralizing to the last degree. Your assessor takes up the assessment books with the perfect consciousness that, do what he will, his neighbor who owns land is to be robbed. His neighbor knows that, and the consequence is, that the assessment of real estate never tells the truth. Real estate is never assessed truthfully, and thus a general demoralization ensues. I insist that a people cannot prosper whose officers either work or tell lies. There is not an assessment roll now made out in the State that does not both tell and work lies." *M. I. Townsend, Delegate at Large, Troy, N. Y., Ibid., vol. 3, p. 1945.* "It is undoubtedly true that not one-half—I think I may say one-quarter—of the property, real and personal, in this State, is reached by the assessor." *David Rumsey, Delegate of 27th Senatorial District, Ibid., vol. 3, p. 1947.*

that land was seldom actually appraised above one-third of its value. This being the case with real estate, which was appraised only once in five years, the practice was in many towns to do the same by personal property, and only put on one-third of that, while other towns put it on at least one-half, and others at full value. Then again the valuation in real estate caused individuals to 'take care of themselves' by secreting or holding back from the listing the larger share of their personal estate. Our laws, too, allow offset against personal property (not against real estate), and practically we found people heavily in debt at the time the assessors made their appearance—all this evasion and fraud to avoid paying too much State and county taxation. I was one of the assessors in ——— this year, and assisted in appraising the real estate, and the footings were over five and a half times as large as they were five years ago. The appraisal was equalized with fifteen towns in this county by another county board, and they reduced the appraisal to less than two millions. Then a State board averaged the counties of the State, and raised this county fifty per cent, and that leaves our real estate standing out between fifty-one and fifty-two per cent of its selling value. Careful examination of appraisals and of records of transfers, show that some towns making the same oath we made had only put their lands in at thirty-one and one-fourth of its current selling value. Even under this outrageous practice our Legislature, which has just adjourned, could not be induced to pass any listing law."

VALUATION OF PERSONAL PROPERTY.

But great as may be the inequalities in the valuation and assessment of real property, those which obtain in respect to personal are so much greater, as to almost preclude the idea of comparison.

A careful consideration and study of the nature and classification of property, inclines the commissioners to indorse the correctness of an opinion which appears to have been originally proposed by a financial writer of New York,* as far back as 1851, viz.: "That

*"The statistics presented by assessments of property for the purposes of taxation invariably exhibit the estimated value of land, and its meliorations under the head of 'real estate,' and the estimated value of all other productive capital under the head of 'personal estate.' Assessments made with the view of obtaining information for the guidance of statesmen, or for historic data, usually observe the same rule of classification. Thus divided, we may readily infer that the value of real estate greatly exceeds that of personal estate, and so these statistics invariably indicate. But if we take the estimate for any given village, town or city, and from the gross value of the real estate deduct the value of the buildings, and add it to the personal estate, we shall then find them equal, provided its assessment has been correctly made, which, by the way, very rarely occurs."

"Now, as to observation, those who are familiar with the value of property in the city of New

universally the market value of the aggregate of land and that of the aggregate of productive capital are equal;" and, further, that in highly civilized and densely populated States, like New York, Massachusetts, Rhode Island, etc., the separate aggregates of property generally classed under the two heads of "real" "and personal," either equal, or closely approximate to each other in actual value. In the light of this theory, let us next inquire how far any degree of conformity of valuation for taxation of these two classes of property can be found in the results of recent practice and experience. The following table shows the separate aggregate valuations of real and personal property for assessment and taxation in the States of New York, Massachusetts, Ohio, Iowa and Illinois, for the years 1869–70 (under a corresponding system of assessment and valuation), together with the ratio of the respective valuations in question:

York (any other city would serve equally well as an illustration) are aware that the market value of the land on which it is built is much greater than the value of the buildings that if each building lot and each building in the city should be separately put up at public sale, and sold to the highest bidders, the aggregate price of the lots would greatly exceed that of its buildings. But if the productive capital contained in the buildings should be included with them, then the gross price of the two would be about equal. This is in accordance with our theory, and we think that observation strongly supports the position, if it does not establish its soundness. A striking evidence of its truth is afforded in the well known fact that each lot will bring a price corresponding with the amount of productive capital either upon it or in its immediate vicinity. Take Wall street, for example, where the buildings are most costly and contain most of productive capital; there the value of land is greatest. Take a portion of the city above, the buildings are poor, and the locality remote from the productive capital employed in commerce; there the value of the land is least. Here, it should be remarked, that buildings and parts of buildings designed for ornament rather than for use, do not come under the denomination of productive capital. The true test of productive value belonging to a house, store or other building is the rent it will command, independent of the ground rent. It is to be observed, also, that productive capital influences the market value of and beyond the immediate spot on which it is placed. For this reason it would be necessary, in order to render the two exactly equal in New York, or any other city, to include the suburbs and adjoining lands in the estimate. Again, little more than half a century has elapsed since the land on which the city of Cincinnati stands was purchased at one dollar per acre. There was then no capital there; now there are many millions of capital there; and hence we now find the market value of the land, exclusive of the erections, as many millions. It is thus of all other cities, towns and villages throughout the civilized world; and it is thus in all agricultural districts, but in these the land and its meliorations are so much more intimately blended that we cannot perceive the facts so readily."

"The truth is, the market value of land is merely the reflection of the value of the productive capital placed upon it and its immediate vicinity. It has no real value of its own; it costs nothing to produce; but since the laws have endowed it with the vital principle of wealth by subjecting it to individual ownership, it can no longer be obtained without giving in exchange for it an equivalent portion of the capital present and designed to concur with it in the production of wealth." *Treatise on Political Economy. George Opdyke, page* 89-91; *New York*, 1851; *G. P. Putnam & Co.*

STATES.	Valuation of real estate. 1869.	Valuation of personal property, 1869.	Ratio of personal to real.
New York	$1,532,720,907	$434,270,278	1 to 3.50
Iowa	222,561,061	71,971,191	1 to 3.09
Illinois	346,587,734	142,407,041*	1 to 2.43
Massachusetts	838,083,415	503,085,988	1 to 1.64
Ohio	697,418,203	459,762,252	1 to 1.51

The following table also exhibits the separate aggregate valuations of real and personal property in several of the cities of New York and of other States, for the year 1869–70 (under a corresponding system of assessment and valuation), together with the ratio of the respective valuations in question:

CITIES.	Valuation of real estate.	Valuation of personal property.	Ratio of personal to real.
Brooklyn, N. Y.	$183,689,579	$17,559,980	1 to 10.46
Rochester, N. Y.	9,725,736	1,501,600	1 to 6.47
Buffalo, N. Y.	30,904,139	6,735,915	1 to 4.58
Albany, N. Y.	25,144,980	5,915,278	1 to 4.11
Chicago, Ill.	211,371,240	54,683,655	1 to 3.86
Springfield, Mass.	17,665,610	5,901,570	1 to 2.99
Jersey City, N. J.	21,995,460	8,735,610	1 to 2.51
New York city	684,140,768	281,142,696	1 to 2.42
Worcester, Mass.	21,608,800	9,642,550	1 to 2.24
Milwaukie, Wis.	29,382,695	14,110,618	1 to 2.08
Troy, N. Y.	10,654,144	5,366,965	1 to 1.98
Lowell, Mass.	16,195,125	8,595,871	1 to 1.88
Boston, Mass.	365,596,100	218,496,300	1 to 1.67
Cincinnati, Ohio	72,243,844	58,471,666	1 to 1.23
Providence, R. I.	50,908,400	42,162,500	†1 to 1.20

Attention should also be called to the circumstance, that cases are not unfrequent, in which the valuation of the personal property of certain towns and cities for taxation is in excess of the valuation of the real property. Thus, for example, in the city of Cincinnati, in 1866, the valuation of the real estate was $66,454,662, and of personal property $67,218,101; but it is curious to note, that three years subsequently, or in 1869, when the tax rate had advanced from 2.16 to 3.19, the valuation of personal property shrunk from $67,218,101 to $58,471,166, or over twelve per cent. Again, in Massachusetts, which is the only State which publishes in full detail its valuations and assessments, the valuations for 1869–70 exhibit the following cities and towns as possessing an aggregate of personal in excess of real property, viz.: Salem, Nahant, Nantucket, Brookline, Brewster, Dennis, Provincetown, Wellfleet, Yarmouth, Great Bar-

* Including $16,280,960 assessed under the head of railroad property.

† Although the official figures indicate an approximative equality in the valuation of real and personal property in the city of Providence, it is nevertheless probable that the inequality is really very considerable; possibly as great as in any city of the country.

rington, Stockbridge, New Bedford (in the proportion of 14 to 8), Hatfield, Milton and others; while in many others the approximation in valuation of the two classes of property is very close.

The following table shows the comparative valuation and ratios of the real and personal property in several of the counties of New York, as shown by the Comptroller's report for 1870:

COUNTIES.	Valuation of real property.	Valuation of pers'nal property.	Ratio of real to personal.
Hamilton	$736,550	$10,610	1 to 69.4
Essex	4,680,858	450,400	1 to 10.39
Schuyler	3,194,515	317,750	1 to 10.00
St. Lawrence	14,946,943	1,558,385	1 to 9.59
Allegany	7,677,912	860,121	1 to 8.92
Monroe	23,066,624	2,739,692	1 to 8.67
Schoharie	4,654,969	638,852	1 to 7.28
Cortland	5,310,459	753,909	1 to 7.04
Delaware	7,365,319	1,209,777	1 to 6.08
Westchester	42,089,998	7,838,654	1 to 5.37
Albany	35,345,497	7,669,879	1 to 4.60
Ulster	10,859,402	2,498,953	1 to 4.34
Washington	11,906,632	3,208,464	1 to 3.71
Erie	41,462,863	11,431,680	1 to 3.62
Rensselaer	21,720,013	7,796,515	1 to 2.91
New York	684,140,768	281,142,696	1 to 2.42

In Oneida county, the assessed value of personal property in 1842, was $2,217,975; and in 1869, $2,166,411, showing a decrease in twenty-seven years of $51,564. But the national bank capital of two cities of this county, on the 1st of October, 1870, with surplus and undivided profits, was $2,172,000 or $6,411 more than the whole personal property of the county, returned during the same year for assessment.

In 1835 the personal estate of *Westchester county*, was returned at $2,324,693, with a population of 38,789. In 1870, with a population considerably in excess of 100,000, the assessed value was $7,709,512; or only $4,928,880 in excess of what it was in 1853.

In 1858 the personal estate of *Dutchess county* was assessed at $7,701,502; in 1870 at $8,825,233; showing an increase in twelve years of only $1,123,731.

In 1868 the personal estate of *Erie county* was assessed at $11,431,680; in 1870 at $8,155,240; showing a decrease in two years of $3,276,440.

In *Monroe county* personal estate was assessed in 1858 at $4,414,362; in 1870 at $2,739,692; showing a decrease in twelve years of $1,674,670. In 1865 the value of the farm stock of this county was returned at $3,408,109; and of farm implements at $941,997. The capital, surplus and undivided profits of the national banks of Rochester on the 1st of October, 1870, was $1,558,206; while the

aggregate deposits of the savings banks of the same city of the 1st of January, 1871, were considerably in excess of $7,000,000.

In 1858 the personal property of the *county and city of Albany* was assessed at $8,310,141; in 1870 at $7,535,171; showing a decrease in twelve years of $874,970.

In 1842 the valuation of the personal estate of *Onondaga county* was $1,891,954; in 1870 $4,275,275; showing an increase in eighteen years of $2,384,321. The capital, surplus and undivided profits of the national banks of Syracuse, in this county, on the 18th of October, 1870, were $1,656,548; the capital of the Onondaga salt company $1,200,000, and the resources of the savings banks of Syracuse January 1st, 1870, $3,650,264; making a total of $6,506,812, or $2,231,537 in excess of the valuation of the personal estate of the whole county.

It would seem as if no intelligent person could give the slightest consideration to the facts revealed in the foregoing tables and statements without arriving at the fullest conviction that the valuation of personal property for the purposes of taxation generally, and in the State of New York especially, is a mere semblance, and a libel upon the intelligence and honesty of both those who enact and those who administer the laws. But the evidence thus far presented on this subject is by no means complete. Of the States of the Union which adopt the plan theoretically, of subjecting all real and personal property to a uniform rule of assessment and taxation, Massachusetts and Connecticut may be selected as examples in which the greatest measure of success in respect to the execution of the law has been attained to; and beyond the results in which, as reported, nothing better is to be expected; especially in Massachusetts, where the system, both as regards law and administration, is regarded as practically successful. And yet in Massachusetts the opinion has been expressed to the commission by the most experienced of assessors, that of the personal property of the citizens of the State subject to taxation, *full one-third* annually escapes valuation and assessment; while in Connecticut the amount is estimated by officials most conversant with the subject, as high as *forty per cent.*

An incident of recent Massachusetts experience may also be referred to as both instructive and suggestive. In the city of Boston the assessors are removed one degree from the people, being elected by the aldermen and common council. In the city of Dorchester (that was), on the other hand, the assessors owed their places directly

to popular election. In January, 1870, the city of Dorchester, by vote taken in June, 1869, was annexed to and became a part of Boston; the conditions of the election of the assessors in the former city being at the same time prospectively changed in conformity with the Boston rule. Now, it may be, that between these changed conditions in respect to the office of the assessors of Dorchester there was no necessary connection; but it is nevertheless a fact, that the officers who, elected by popular vote, valued the property of Dorchester for assessment in 1868 at $15,326,000, valued the same property on the succeeding year (1869), after annexation had been determined upon, at $20,315,000, or at an advance in one year of nearly *thirty-three* per cent. The conclusion in any event would seem to be inevitable, either that the people of Dorchester greatly increased in worldly goods during the year 1868–9, or else that the Massachusetts system of taxation, so far as Dorchester was concerned, had been previous to 1869 but most imperfectly administered.

In Illinois, another State where the uniform rule of valuation and assessment of all property is adopted, the Chicago board of trade report for 1869–70, states, "that the valuations of property for taxation (throughout the State) are not more than one-quarter the actual cash value of the different kinds of property assessed." And yet the statute of Illinois requires that all property shall be valued and assessed at its actual and true value.*

*State Taxation of Illinois.—The uniform low valuation of property for assessment purposes in Illinois admits of an explanation, which, in itself, however, constitutes one of those anomalies of taxation in the United States especially worthy of record and preservation.

Previous to the adoption of the Constitution of 1848, the State of Illinois had practically repudiated her debt. Payment of interest had stopped, the credit of the State was very low, and a community exempt from taxation for one purpose was unwilling to be taxed for others. Demagogues impeached the validity of the State debt, and opposed any taxation for its payment. When the convention met in 1847 to revise the Constitution, this debt was a perplexing question to many. Finally, distrusting the honesty of the people, the convention submitted to a *separate* vote the following article:

"There shall be annually assessed and collected, in the same manner as other State revenue may be assessed and collected, a tax of two mills upon each dollar's worth of taxable property, in addition to all other taxes, to be applied as follows, to wit: The fund so created shall be kept separate, and shall annually, on the first of January, be apportioned and paid over, *pro rata*, upon all such State indebtedness, other than the canal and school indebtedness, as may for that purpose be presented by the holders of the same, to be entered as credits upon and to that extent, in extinguishment of the principle of said indebtedness."

The people ratified this by a large majority, and the tax was thus made permanent, and placed beyond the control of the Legislature. The first tax was collected in 1849-50, and the Legislature then provided for the immediate funding of the unpaid interest, and in various ways for the ascertainment and funding of the principal of the State debt. The credit of the State was revived, and in 1852 the State entered upon that prosperity for which it has been ever since distinguished.

The mode of assessment, however, which had prevailed previously was continued, which was, for each county to make its own valuation and assessment for taxation; and, as might have been expected, was productive of the grossest inequalities. To remedy these, the Legislature felt compelled, in 1867,

An incident illustrative of the condition of taxation in another western State, adopting the same system, has also not a little of significance. In conversation with a gentleman occupying high official station under the federal government, the opinion was expressed by him that in his State the existing system was about as good as it could be, and, withal, just and equitable; and yet, continued the relator, there was one circumstance connected with myself this year that struck me as a little singular. I returned my property for taxation in accordance with the exact truth, naming a sum much under $100,000, and some days subsequently I was waited upon by one of the assessors and requested to take back the return and amend it, the reason given for the request being, that I had returned a larger amount of personal property than any other one individual in my county, where I was never before regarded by any one as entitled to be classed among the number of our wealthy citizens.

As before stated, the personal property of the entire State of New York was returned, for taxation for the year 1869–70, at $434,270,278, which, with a population of 4,370,346, would give $99.13 *per capita*. On the other hand, Massachusetts, with a population of only 1,457,385, returns for 1869–70 a valuation of personal property of $503,085,988, or at the rate of $345.19 *per capita;* while Ohio, with a population of 2,852,302, returns for the same year a valuation of personal property of $459,762,252, or at the rate of $189.67 *per capita*.

As a further contribution of information relative to the estimated valuation of the personal property of the State, attention is also asked to the following schedule of property having a *situs* within the State of New York, which, for the most part, would be classified as *personal* in any scheme of valuation for assessment and taxation:

to provide for an annual meeting of a "board of equalization," which, in a degree, accomplishes the work designed for it.

The Legislature makes the annual appropriations, and there is a permanent law providing for a tax for school purposes and for interest; but the Legislature never fixes the rate of tax. The Auditor ascertains the amount he will need to cover the appropriations made by the Legislature, and taking the equalized valuation by the board, he fixes the rate so as to produce that sum for general revenue, including the art of collection. But the two-mill tax for the State debt, presented by the Constitution, is absolute, and has to be collected whether it is needed or not. The State is furthermore in the receipt of a large annual revenue from the Illinois central railroad, and this revenue, by contract, is also applicable to the same purposes as is the two-mill tax. The result is that the State is in the receipt of a much larger revenue than it can apply to the extinguishment of its debt; and to avoid the collection of an unnecessary revenue under the constitutional two-mill tax, it has been found necessary to keep the assessed valuation of property as low as possible. It is difficult to form any estimate of what the actual value of the State property is; but the State Auditor, in 1869, estimated the State valuation at not in excess of twenty-five per cent. This is reported to the commissioner as approximating the truth, except that it varies in some counties, especially in Cook county—the county in which Chicago is situated—where bank property (shares) have been at times taxed to their full value.

Steam Railroads.

Capital stock paid in	$192,882,640 00
Amount of funded debt	79,712,601 00
Interest certificates	23,036,000 00
Total	$295,631,241 00

Horse Railroads.

Capital stock paid in	$15,988,790 00
Funded debt	9,407,610 00
Total	$25,396,400 00

National Banks.

Capital paid in (October, 1870)	$113,497,741 00
Surplus	26,438,158 49
Undivided profits	15,138,076 80
Total	$155,073,976 29

State Banks.

Capital of banks doing business under the laws of the State (Sept. 30, 1870)	$19,759,810 00

Savings Banks.

Resources (July 1, 1870)	$208,607,148 00
Real estate investments, deducted	3,285,608 00
	$205,321,540 00

New York State Fire and Marine Insurance Companies.

Assets over all liabilities, except capital and scrip (Dec. 31, 1869)	$61,958,998 00

New York Life Insurance Companies.

Assets over all liabilities, except capital and script (Dec. 31, 1869)	$20,471,297 00
Fire insurance risks in force in the State (Dec. 31, 1869	2,300,306,952 41

MISCELLANEOUS.*

Gas companies, estimated capital	$20,000,000 00
Express companies and associations, and navigation and transportation companies, other than railroads, estimated	40,000,000 00
Ferry and bridge companies, estimated	6,000,000 00
Water works, not municipal	1,500,000 00
Capital employed in manufactures, less real estate, estimated	150,000,000 00
Value of farm stock and other animals	140,000,000 00
Other personal property, *i. e.*, stocks of goods; money at interest or employed in trade, speculation or private banking; vessels, vehicles, furniture, pictures, jewelry, musical instruments, watches, plate, libraries, etc., estimated	500,000,000 00
Estimated value of farm tools and implements, based on census returns of 1865	25,000,000 00
Estimated value of the annual agricultural product of the State	150,000,000 00
Estimated value of the annual product of manufacturing industry	400,000,000 00

RECAPITULATION.

The sum of the above items, exclusive of the estimated annual value of the products of agriculture and manufacturing industry, amounts to $1,665,013,262.

The following deductions from the statistics of the income tax levied by the national government will also assist in the formation of an opinion as to the amount of personal property at present existing in the State of New York.

For the year ending June 30th, 1866, the national government, under the internal revenue system, is reported to have collected income taxes from 96,000 persons in the State. In that year an income of $600 was exempted to each person, the exemption being upon the earnings or income of the individual, and not upon any property with which the earnings or income may have been associated. This exemption represented $59,600,000, while the revenue derived from the income tax of five per cent, amounting to $5,993,123, represented an income of nearly $120,000,000. During the same year an additional revenue of twelve millions ($12,289,127) was also collected from

* The estimates here given under the head of miscellaneous are not presented as reliable, but simply as approximations which are not in excess of the true value. The data for forming reliable estimates are not at present obtainable by the commission.

citizens of New York, under an income tax of ten per cent on the excess of all incomes over $5,000, which in turn represented a further income of $120,000,000, the whole showing an aggregate income of the people of the State of New York, for the years 1865–'66, to have been at least $300,000,000, and which capitalized at six per cent represent five thousand millions of productive property. Now the valuation of all the property of New York, for the purpose of assessment and taxation for the year 1870, is only $2,052,479,570. Again, in a debate in the constitutional convention, 1867–'68, Hon. James A. Bell, who was chairman of the joint committee of the Legislature in 1862–'63, for the revision of the laws relating to taxation, made the following statement:

"The committee held a session in New York and examined into the manner and mode of the assessment of property in that city. We ascertained that only about $80,000,000 of personal property was placed upon the assessment in the entire city. The committee inquired of those who came before them—and they were gentlemen of great intelligence and business capacity, one of them of the firm of Brown, Brothers & Co.—if they thought that one-third of the personal property of New York city was placed on the assessment roll. This gentleman said that his acquaintance was limited compared with some other gentlemen, but he believed he knew persons owning as much personal property as that within his limited circle of acquaintances."

In the same debate, another delegate (Mr. Pierrepont, of New York) stated that he could name in the State "*thirty* men whose aggregate wealth is $450,000,000, whose individual average wealth is $15,000,000;" or over twenty-five millions in excess of the valuation for that year of all the personal property of the entire State.

The following are illustrations to the same effect of a more specific character. In the city of Brooklyn the aggregate valuation of all property for the current year is $201,249,559; but of this, $183,689,579 represent real estate, and only $17,559,980 personal property. And it is to be further noted, that of this seventeen millions valuation of personal property in this great city, $7,956,820 are assessed against corporations, banks, ferries, gas companies, etc., leaving only $9,603,-160 against individuals, an amount which probably does not equal the aggregate personal property of two of its citizens.

In the town of Batavia, Genesee county, with a population in 1865 of about 6,000, the valuation of personal property for the years 1869–70 is reported at $954,995; while the neighboring city of Rochester,

with a population of 62,429, a savings bank deposit alone of over $7,000,000, and with corporation stocks to an aggregate of over $1,300,000, the valuation of personal property for the same year is only $1,501,600, or but little more than a half a million in excess of that of the small town of Batavia. And yet, the assessors who value and enroll personal property for assessment in the State of New York are, required to subscribe to an oath of the same effect as that above quoted, in respect to the valuation of real property, viz., that they have enrolled and valued the same at its "full and true value."

Similar illustrations to almost any extent might be given, if any further evidence was necessary to complete the demonstration of the utter inadequacy of the present system, both as respects law and practice, in the State of New York, to provide for the assessment and collection of taxes upon personal property. The commissioners, therefore, will content themselves with making but a single additional reference on this point, viz., to a report transmitted to the Legislature January, 1864, by Theodore C. Peters, at that time one of the State assessors. In this report the following opinion as the result of much investigation is expressed: "Of the taxable property of the State, not one-fifth of the personal property is now reached; while the real estate is assessed upon eleven-twentieths of its value, personal is on less than four-twentieths." A further conclusion arrived at in this report was, "that the value of personal property in the State fully equals that of the real estate," and that the two classes in 1862 had each an approximative aggregate value of $2,169,365,000, or a total of $4,338,731,000.

DISCUSSION OF REMEDIES.

Having thus, at some length, presented the reasons which seem to require prompt action on the part of the people and authorities of New York, with a view of reconstructing or improving the existing system of valuing and assessing property for the purpose of raising revenue to defray general and local expenditures by means of taxation, we come next to a consideration of the question as to what remedies for existing evils are likely to prove both efficient and expedient.

And, first, it would seem that there could be no essential difference of opinion in regard to the correctness of the proposition, that the object which it is desirable to effect, or the end to be attained to, is *equality and certainty in assessment and collection;* and, furthermore, that any system which will insure equality in assessment;

certainty and economy in collection, and comparative freedom from trouble and annoyance to the tax-payer, will in itself constitute the perfection of taxation. On the other hand, when there is uncertainty and inequality in the methods of assessment and collection, the tax becomes a mere arbitrary exaction, repellant and destructive alike to capital, manufactures and commerce.

It is an error, however, to assume that all descriptions of property should be subjected to taxation in order to insure equality and uniformity. On the contrary, all experience has shown—none better than that of the United States—that the more "concrete" and the less diffused a system of taxation can be made, the better for the people and the better for the State; for, with the exception of direct taxes on income, and upon those articles, like spirits and tobacco, which are consumed solely for personal gratification, taxation distributes itself with a wonderful degree of uniformity. If placed upon land, it will constitute an element of the cost of that which the land produces; if upon manufacturing industry, then of the cost of the products of such industry; upon shipping, of the cost of that which the ship transports; upon capital, of the cost, price, or interest, which is paid for the use of such capital; and if upon buildings, it will be reflected upon the income of the occupier, or upon the cost of the goods, wares and merchandise stored, exchanged or produced therein. In short, "to the extent that any individual or class can transfer the onus of a tax to others by including it in the price of his commodities or services, such individual invariably does so."* And so a tax imposed upon an article or service of prime necessity to a community, like land or buildings, for example, becomes, in effect, a tax upon all, without the vexations of infinitesimal application. The oil operators find that one well, intelligently sunk in the right spot, will drain the whole basin better than many, with less expense and with no disturbance to the surrounding country.

But while it is not necessary to tax *all* descriptions of property in order to ensure equality and uniformity, it is indispensable that no system of taxation should be adopted which will not act uniformly

* "Each individual or class in transferring the onus or burden of his taxation to others, does so in the face of a constantly decreasing number of those left to sustain the tax. And this transfer of liability occurs again and again, till having reached the farthermost, it finds its way back, like the answering ripples of a pond, or the responsive echoes of a valley, to the point whence it starts, but somewhat modified in intensity, every intermediate individual or class having had to suffer, in the increased price of the products or services of those immediately beyond them, a portion of the liability. These ripples and answering ripples of transferred liability, after repeatedly flowing back and forth to one another, at length come to a comparative state of rest; and thus all members of the community become eventually equally burdened."

and equally upon all property of the same kind, or upon all persons owning the same class of property within the State; inasmuch as if any one man is taxed, and another man exempted on the same class or description of property, the tax assumes the character of confiscation. In fact, in almost every community it is not so much the extent as it is the inequality that constitutes the burden of taxation, and the commission have been impressed with the circumstance that in conversing with the heaviest tax-payers of the State it has not been so much the amount paid that is complained of, as it is, that while the individual in question claims to pay, his neighbors and associates in some way manage to escape.

In the soundings which have recently been made at great depths in the ocean for telegraphic or other purposes, the sounding line has not unfrequently brought up from the bottom small chambered shells or other minute animals of exquisite organization and structure; and the question naturally arises, in what manner can these minute organisms live and flourish under the enormous pressure that in some instance must be exerted, of at least three tons to the square inch? The explanation is to be found in the circumstance that the pressure is everywhere equalized, being as much from within outward as from without inward, and thus an equilibrium is maintained under which development goes on and existence is made possible; and it is in preserving this equilibrium, this equalization of pressure (says Mr. Lowe, from whose speech as chancellor of the English exchequer the above illustration is derived), that the whole secret of taxation consists. All experience shows that a people who are moderately prosperous will bear the heaviest burdens of taxation without complaint when they feel that the distribution is just and equal; but when the distributions are unequal, somebody inevitably is being either plundered or crushed.

And hence is made apparent the gross injustice that has been committed in maintaining by the States of the Union a system of taxing personal property generally, and yet at the same time of exempting from taxation under the over ruling authority of the national government the equivalent of full one-fifth of all such property (national securities) under the plea of necessity.

But to remedy the evils inherent in, or growing out of its system of taxation as it exists to-day in New York, and in most of the other States, two courses, and two only would seem open for adoption. *First*, to attempt to amend and strengthen the present system. *Second*, to construct a new system.

Reform by way of Amendment.

Valuation of Real Estate.—And in discussing the nature and scope of the amendments which may seem necessary to perfect the existing system, the subject of real estate or real property, naturally comes first in order for consideration.

Here everything, as the term implies, is real, tangible, visible; something which cannot be concealed; something which cannot, under any circumstances, be removed beyond the jurisdiction of the State, except by transfer to the federal government; something, concerning which the laws and decisions of the courts harmonize rather than conflict. In the valuation of real property, furthermore, it is possible to apply such tests and verifications, as will restrict the errors of estimate within comparatively narrow limits. It would also seem as if the law as it now stands was sufficiently clear and explicit in its declaration and mandate; and if it is not, a very simple enactment is all that is requisite to make it so. Thus the language of the statute is as follows:

"*All lands within this State, whether owned by individuals or corporations, shall be liable to taxation. The term "land," as used in this chapter, shall be construed to include the land itself, all buildings and all other articles erected upon or affixed to the same; all trees and underwood growing thereon, and all mines, minerals, quarries and fossils in and under the same.*" 1 *R. S.*, 387.

All real estate liable to taxation shall be estimated and assessed by the assessors at its full and true value, as they would appraise the same in payment of a just debt due from a solvent debtor. 1 *R. S., as amended*, 1851, *ch.* 176; and, on completion of the assessment roll, the assessors are severally required to appear before a justice and make and subscribe an oath, to the effect, that they have set down all the real estate in the district (town or ward) subject to their jurisdiction, and that they have estimated its value "*at the sums which a majority of the assessors have decided to be the full and true value thereof, and at which they would appraise the same in payment of a just debt due from a solvent debtor.*" "*And every assessor who shall willfully swear false in taking and subscribing said oath, shall be deemed guilty of, and liable to the penalties of willful and corrupt perjury.*" 1 *R. S., chap.* 176, § 8.

It is difficult to see how language, other than this, could be made more clear and explicit; and it is accordingly evident that if the law fails in its execution, as it certainly does, the fault is not in the statute, but in its administration. The remedy, therefore, must be found in

making the administration more effective, or in compelling the assessors to do their duty in accordance with the strict meaning and provisions of the statute. And this, in the opinion of the commissioners, can only be effected by the creation of some central authority, either a single commissioner of taxes, as in Massachusetts, or a board of commissioners, whose tenure of office should be made as permanent and as far removed from partisan influences as possible; and who, clothed with all proper authority, and supported by the law officers of the State, should be required to practically enforce the laws, by providing for revaluations of real property when the same are evidently defective and erroneous; and by prosecuting, to the full extent of the law, all derelictions of duty on the part of the assessors. Such a provision of reform necessarily involves the creation of new officers and some expenditure; but if the proper officer or officers can be found, the State can make no expenditure from which the return would be more prompt, ample and beneficial. As it now is, the system has no recognized head or central spirit of authority, whose sole province is to secure alike the enforcement of the laws, and to learn, by experience and investigation, how best to remedy their imperfections.

It is important to further state in this connection, that there does not appear to be any practical difficulty in the valuation and assessment of real estate at its true or approximative cash value, as is often supposed, and in fact was asserted in the debates on this subject in the New York constitutional convention of 1867–68. Such a valuation is an essential feature of the system of Massachusetts, and is carried out to a great extent at least in the city of Boston. It has also been formally adopted within the last few years in the cities of Philadelphia and Chicago, as a substitute for what has been termed the previous "guess-work system," and in both cases it is reported as working successfully. In the city of Providence, R. I., as one method of securing a true valuation of real property, a registry of all sales of real estate, at the time of such sale, with the consideration given for the same, is made obligatory; and as the record of such sales influences or determines the market value of such property, it becomes an object for those interested or dealing in real estate to see that this particular requirement of law is complied with.

The effect of the change in a specific instance, from a "guess work" to a "cash" basis of valuation, as shown by the statistics of Philadelphia, is too remarkable to be passed over in this discussion.*

The laws of Pennsylvania, in common with those of New York, had indeed for many years required the assessment of real property to be made on a basis of "actual value," with an oath on the part of the assessors (and a penalty for false swearing, or neglect) that they had complied with its provisions; but in Philadelphia, as to-day, also, in New York, the law had never been executed, until 1868, when the supervision and control of the assessment and collection of taxes in Philadelphia was intrusted to a commission of three officers, called the "board of revision of taxes," who both understood and were determined to discharge their duties. The results of their work were shown in the fact that in the first year the valuation of real estate advanced from $160,350,666 to $445,563,321; and of personal property (the descriptions of personal property liable to taxation in Philadelphia, as before shown, being limited), from $3,737,785 to $7,954,169; while the rate of taxation decreased from $4 to $1.40. The above facts are also further illustrated by the following table, which shows the valuation of real and personal property, and the rate of taxation in the city of Philadelphia from 1866 to 1871, inclusive:

YEARS.	Real estate	Furniture, horses and carriages.	Total.	Tax rate per $100.
1866	$159, 590, 142	$3, 241, 687	$162, 831, 829	4.00
1867	160, 350, 666	3, 737, 785	164, 088, 451	4.00
1868	445, 563, 321	7, 954, 169	453, 517, 490	1.40
1869	456, 137, 222	7, 767, 767	463, 904, 989	1.80
1870	470, 851, 800	8, 188, 873	479, 776, 643	1.80
1871	491, 844, 096	8, 592, 786	500, 436, 882	1.80

That this method of valuing real property at its actual value, and exempting in a great degree personal property from taxation, does not moreover in any way retard improvements in real estate in Phila-

*The interpretation put upon the term "cash value," or "cash sale," in the valuation of real estate in Philadelphia, is thus explained in the following statement of the chairman of the board of revision of taxes, in that city.

"I have given a construction to our law that it does not mean 'cash sale,' but 'fair sale;' such as usually made; say cash; or part cash, and part mortgage. The truth is, that few sales are made in cities for all cash; and mortgages being easily negotiable, the rule is a fair one. My reason for this ruling was that we could be guided by the ordinary sales, and it made greater equality according to the actual value. For if a property worth $2,500 were exposed for sale for cash, there were hundreds of people who could command that amount of money, and pay the full value of it; but if a building and lot worth $300,000 was so exposed, very few of those who were able to buy so large a property would be willing to pay all cash. So that the larger and more valuable the property was, the less tax it would pay in proportion to its actual value, if we had to rate it at what it would bring at a 'cash sale.' For this reason, I think, rating at a 'fair sale' better than a 'cash sale.' It leads to greater equality, according to actual value."

delphia, is proved by the following statement made to the commissioners by a leading authority of that city, under date of January 6, 1871. "We build double the number of houses that we did in any year previous to 1867 (when the valution was increased), and capital was never more willing to invest in the building of dwelling-houses than at the present time; already blocks of hundreds have been contracted for to be commenced as soon as the weather will permit in 1871."

VALUATION OF PERSONAL PROPERTY.

Coming next to the consideration of personal property with reference to its valuation and assessment, we find the circumstances altogether different from those which obtain in respect to real * property. Here much of the property which it may be desirable, and under the present system is made obligatory on the assessors to assess, is invisible and incorporeal; easy of transfer and concealment; not admitting of valuation by comparison with any common standard, and the determination of the *situs* of which, as will be hereafter shown, constitutes one of the oldest and most controverted questions of law. When once, moreover, personal property is valued and enrolled for assessment, the assessment list is necessarily subject to losses which never occur in respect to real property. Business firms assessed on their merchandise, machinery or capital, fail, dissolve and break up, and the taxes are practically abandoned. Householders break up, sell their personal effects, leave the place of their assessed residence, and the tax levied upon them is lost. Deaths break up households and the property ceases to exist as assessed. To this must be added, especially in the large towns and cities, householders whose only taxable property is their household furniture, valued at all sums from $250 to $1,000 (the latter being the amount exempted by law from execution, and consequently from taxation), and whose taxes if assessed according to law would range from ten to twenty dollars. A large majority of these are very poor people, or people of such limited means that they will not pay the tax except by compulsory legal process, and the resort to this, public opinion

* The use of the words "real property" is wholly arbitrary. In the days when the distinction between it and personal estate was first made, that class of real property which consists of buildings was too unimportant and of too little value to claim a separate title. But of course, at present, a house is an investment of fixed capital, and is analogous to any other kind of similar investment; as for example, machinery. The rent of a house when the ground is distinguished from the building rent is merely interest on capital, and ought to be put in the same classification. And it may be here observed, that at the time when the distinction was made, personal was much more valuable than real estate.—*Thorold Rogers on the Incidence of Local Taxation, Journal London Statistical Society, June*, 1870.

generally in every enlightened and Christian community never has and probably never will sanction.

Fully recognizing these facts, the recognition being due in most instances to years of tentative experience, all the leading civilized and commercial nations on the face of the globe (and the commission think they are warranted in making the assertion broader, and in saying every nation, civilized or uncivilized) with the single exception of the United States, have abandoned all attempts to levy a direct tax on personal property in the possession of individuals, as something entirely beyond the reach of any power of constitutional law, or indeed of any power save that possibly of an absolute despotism, to effect, with any degree of perfectness or equality; while the opinion of the civilized world generally is further agreed that all attempts to practically enforce laws of this character are alike prejudicial to the morals and material development of a State. And the commission would add that in this latter respect the experience of the United States constitutes no exception. As one illustration of the truth of this statement, attention is called to the circumstance that in the recent report of the commission appointed by the British Parliament during the past year to inquire into the subject of local taxation,* a large octavo volume of 300 pages, there is hardly a reference made to the subject of the taxation of personal property in Great Britain, except incidental allusion here and there, expressive of the opinion of the experts under examination of its impracticability and inexpediency. Thus Mr. Francis Cochran, collector of taxes for the county and city of Aberdeen, Scotland, being under examination, stated the principle of local assessments in the laws of Scotland to be this: "That while one-half of the assessment was required to be levied from the landlord on heritable property, the other half was required to be levied from the inhabitants of the parish, according to their means and substance. Many disputes arose about means and substance, *and the Court of Sessions ultimately came to the decision, which they made authoritative, that it was a preferable plan to take the rents of occupied premises as an index of means and substance, rather than to attempt to get at the means and substance themselves.*" Ques. "With regard to the meaning of this expression '*means and substances*,' will you state to the committee whether you mean by it personal property as well as real?" Ans. "The expression 'means and substance,' I think, was first introduced about the middle of the sixteenth century in the Scotch statutes, and its interpretation at

* See previous notice of this report.

first, no doubt, was not very clear or well defined, or understood; but ultimately it came to be understood in the poor law phraseology as meaning all estate except heritage, which was charged separately. Then various disputes necessarily occurred as to whether it was chargeable upon a man at the place in the parish where the business was carried on, or in the parish where he lived. Some people had the pleasure of being assessed both where they lived and where they carried on their business, but the poor law act of 1845 put that all right and defined it distinctly. *But I may mention that the system was found to be unworkable, and these parishes which had the means and substance system, which were very few, had it gradually changed, as they were permitted to do under the act; and in* 1861, *or thereabouts, an act was passed by the Legislature abrogating it entirely, so that it is at an end, and the index which the court sanctioned is adopted instead of it, namely, occupancy.*"

And again, Mr. D. P. Fry, a member of the legal department of the poor law board, being under examination, the question was asked: "Are you aware of any instances in which the highway rate has been levied on stock in trade in towns?" Ans. "I am not aware of any instances in which the highway rate separately has been so levied; *but there are still existing* places in which, under local acts, personal property is ratable to the poor rates—*i. e.*, stock in trade, shipping and property of that kind—and I should apprehend that in those places it would be equally ratable to the highway rate. "Ques. "But you cannot mention any specific instance?" Ans. I "cannot mention any instance in which I know as a fact that it is rated to the highway rate. I merely infer from the fact of its being rated to the poor rate that it would be also rated to the highway rate, but I do not know that it is so positively." Ques. "Where are those places?" Ans. "Sunderland is one, and I believe there are some others; but it is done under local acts."

And in connection with these statements, consideration should not, moreover, fail to be given to the circumstance that in Great Britain, where taxation of personal property has especially been done away with, the real estate is vested in the hands of a comparatively small part of the population; and yet it is these few, or their immediate representatives, who are now and have been almost exclusively the law makers, and as such have created and maintained the existing tax system, which, while levying all local taxes upon the occupiers of land in the first instance, or, in effect, upon real estate, is neverthe-

less regarded as equivalent, through the law of the diffusion of taxes, to a real and effective taxation upon personal property.

The Roman Method of Taxing Personal Property.

Again, the records of the experience of Rome in the latter days of the empire, in respect to this matter of the taxation of personal property, may be claimed to embody more of practical significance and instruction than all else that has been heretofore, or may be hereafter written on this subject; inasmuch as the Roman, in his capacity of law maker or administrator, does not appear to have ever been influenced to any great degree in his public policy, by either moral or political considerations. And the record of this experience is to this effect: Land, slaves, and cattle, visible, tangible property, were surveyed and enrolled by officers corresponding to the modern assessors; but in respect to other things, in the nature of personal property, the proprietor was questioned under oath by the officials, *who were at the same time anthorized at their pleasure to administer torture;* thus recognizing what was then, equally as now, a clear and well-defined principle, namely, that if a search is to be made successfully for that which, under ordinary circumstances, is in itself incorporeal, invisible and intangible, there must be at the same time an exercise of extraordinary means.

That these extraordinary means, furthermore, were resorted to, is proved by a variety of evidence: One writer of the time (Zosimus), lamenting that the period of the tax collection upon general industry "was announced by the tears and terrors of the citizens, who were often compelled by the impending scourge" to meet their obligations; and Gibbon, in treating of this feature of Roman history, in a measure justifies the proceeding in the following language: "The secret wealth of commerce, and the precarious profits of art and labor, are susceptible only of a discretionary valuation; and as the person of the trader supplies the want of a visible and permanent security, the payment of the imposition, which, in the case of a land tax, may be obtained by the seizure of property, can rarely be extorted by any other means than those of corporeal punishment."

And it is also especially worthy to note, that in every instance in which attempts have been made of late in the United States to remedy the recognized imperfections and inequalities of existing systems of local taxation, the persons intrusted with the duty, possibly without knowing, and probably without caring, what was the experience and custom of the old Romans, have been led by their instincts

and intuitions to go as far in the torture direction for the obtaining of taxes on personal property as the conditions of our modern civilization and the state of public opinion would allow.* And it should be also added, in order to make the statement complete, that in every instance (as before shown) where such systems have been fairly presented to Legislatures or the people, they have failed to secure either attention or approval.

MODERN METHODS OF TAXING PERSONAL PROPERTY.

But the question nevertheless recurs: Supposing the present defective method of taxing personal property is not to be tolerated (and on this point the commission believe there is a complete unity of public sentiment), what course is to be recommended to New York for adoption? And in answer to this it is to be said, that if the Legislature and the people are decidedly of the opinion that the present theory of taxing all personal property directly, wherever it can be found, either in the hands of individuals or corporations, and to the full extent of the power and jurisdiction of the State, is correct and must be maintained, then the law which aims to carry such a theory into effect must be made far more stringent, severe and mandatory than it now is; the assessors must be invested with greater and almost arbitrary powers, to inquire, fine or otherwise punish; and some central authority, as before recommended, must in addition be created, to see that the assessors in turn are in nowise derelict of their duty. If this is the view that commends itself, then the draft of the law prepared by the joint committee of the Legislature in 1862–63, or the system of Massachusetts, or that of Connecticut, or better, the system which was proposed by the "tax commission" of Connecticut in 1868 and subsequently rejected by the Legislature of that State, or the more recent work of the Board of Equalization of Illinois, are all at hand, ready to serve as models. And when we have accepted these as the basis of action, we may be assured that we have the results of the most mature judgment, and of the largest practical experience in the direction indicated.

It is obvious, however, that the essential feature of any system which aims to tax property which is in great part incorporeal, invisible and intangible, must be, as already stated, the provision of extraordinary means whereby such property may be "got at," enrolled or valued for assessment.

* See notice of the "Act for levy and collection of taxes," prepared by the Board of Equalization of Illinois (given hereafter), as described by the Chicago *Tribune*.

The New York committee of 1862–63 arrived at the conclusion that the "only true and certain way" was "to make every man, under the solemnity of an oath, become his own assessor, by compelling him to give a full, minute and complete detail of his property, both as to kind, situation and value, or, in other words, to adopt the method known by the name of *listing*." And yet this committee, "firm in belief," as they say they were, "that this is the only true and certain way," concluded, nevertheless, that they had not better act up to their convictions, but say, that "in deference to the strong objections made to the public inquisition of the listing system as used in other States," they "have, while adopting its machinery, so arranged the management of the same as to confine the details of the examination to the knowledge of the assessor and the party alone; except where, for the furtherance of justice and the punishment of guilt, it is necessary that the same shall be made public." From the fate which subsequently befell the committee's recommendations, and from the expression of sentiment given by the people through the ballot at a later period, it is evident, however, that the instincts of the committee were more to be relied on than their judgments.

In Connecticut the law does not specifically require that persons liable to taxation shall hand in a list of their property and make oath to the correctness of the same, but it does provide that in case of the refusal or neglect of any person so to do, the assessors shall make out the list for him, according to the best of their information, and then add *ten per cent* in addition to the valuation thereof. And, from the list thus made out, the law prohibits the board of relief from making any abatement.

In Massachusetts the law is far more stringent, its principal provisions being as follows:

"Before proceeding to make an assessment, the assessors shall give seasonable notice thereof to the inhabitants of their respective places, or by posting up in their city or town one or more notifications in some public place or places, or by some other sufficient manner. Such notice shall require the inhabitants to bring in to the assessors, within a time therein specified, true lists of all their personal estates not exempt from taxation."

"The assessors shall in all cases require a person bringing in such a list to make oath that the same is true; which oath may be administered by either of the assessors."

"When the assessors of a city or town have given notice to the inhabitants thereof to bring in true lists of all their polls and estates,

not exempt from taxation, in accordance with the provisions of the general statutes, they shall not afterward abate any part of the tax assessed on personal estate to any person who did not bring in such list within the time specified therefor in such notice, unless such tax exceeds by more than fifty per centum the amount which would have been assessed to that person on personal estate, if he had seasonably brought in said list; and if said tax exceeds by more than fifty per centum the said amount, the abatement shall be only of the excess above the said fifty per centum; provided, however, that this act shall not affect any person who can show a reasonable excuse for not seasonably bringing in said list."

"Whoever shall deliver or disclose to any assessor or assistant assessor of taxes, elected or appointed in pursuance of the laws of this commonwealth, any false or fraudulent list, return or schedule of property, as and for a true list of his estates, real and personal, not exempted from taxation, with intent thereby to avoid the lawful assessment or payment of any tax, or with intent thereby to defeat or evade the provisions of law in relation to the assessment or payment of taxes, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment in jail not exceeding one year."

Blank schedules or lists are rarely sent by the assessors of Massachusetts to the tax-payers; but in Boston the practice is to send a small circular, which states, in a compact form, the main provisions of the law, the time when the taxes are returnable and payable, and the further item of information, that schedules in blank for making a list of personal property are obtainable on application. The information given to the commission is to the effect, that in Boston "the citizens prefer to be let alone in this matter of serving blanks or lists, and to allow the assessors to estimate* his personal property, so long as he is not called on to pay too high a price for the privilege. When the tax-payer can no longer afford to pay the cost of the luxury, he makes his appearance; we get our list, and if he fails for two or three years afterward to answer to our notification to file his list (unless we have reason to think he has changed his investments), no material change would be made in his valuation; as we sometimes say we have him rated."

* "The assessors shall ascertain, as nearly as possible, the particulars of the personal estate and of the real estate in possession or occupation as owner or otherwise, of any person who has not brought in such list, and make an estimate thereof at its just value, according to their best information and belief. Such estimate shall be entered in the valuation, and shall be conclusive upon persons who have not seasonably brought in lists of their estates, unless they can show a reasonable excuse for the omission."—*Massachusetts Statutes.*

In some of the towns of Massachusetts, the practice is adopted of publishing annually at the expense of, and under the authority of the town, a complete list of the tax-payers, with a detailed statement of every item of real and personal peoperty assessed to each individual. And yet in the case of one town, in which particular inquiry was made, the resident who furnished a copy of such minute printed statement for the past year, accompanied it with the remark that he knew from direct experience, that personal property was returned and assessed very unequally.*

Of these several systems, that of Massachusetts is unquestionably the best in theory and the most efficient in practice, and if New York desires such a system, it admits of adaptation with comparatively little labor. But the commissioners feel themselves debarred from recommending the adoption of any such system for the following reasons:

*As an illustration of the minuteness of this record and *expose* of property, the commission make the following verbatim extracts from the list of a Massachusetts town for the past year, 1870: names only being suppressed or changed:

	Total.	Polls.	Tax.
John Brown & Co	.....	..	$291 03
Stock in trade, $6,500; machinery, $150; six horses, $600; two oxen, $175; four wagons, $200; shoe shop, $1,350; two saw-mills and privileges, $4,000; shop land, one-eighth acre, $350; mill land below the O. road and around the mill, two acres, $40; land under and around the D pond, fifteen acres, $100; horse pond land, fifty-six acres, $150; Olmstead land, ten acres, $250; Gilbert Wood land, twenty acres, $2,100; wood on Mead land, not cut, $700; Stoddard land, fifteen acres, $700; wood on G. H. Wood land, not cut, $400; King land, six and three-eighths acres, $650; Carruth land, five and five-eighths acres, $1,300; wood on J. Moore's land, not cut, $200; wood on W. F. Downs' land, not cut, $500; wood on Forbs' land, $80	$20,495 00		
Casey, Alexander	.....	1	9 80
House, unfinished, $400; homestead, one-fifth acre, $100	500 00		
Holmes, Norbert	.....	1	2 98
Swine, $20	20 00		
Cain, Patrick (blind)	.....	..	8 17
House, $500; homestead, one-eighth acre, $75	575 00		
Campion, Dennis	.....	1	12 57
Cow, $35; swine, $10; house, $500; homestead, one-quarter acre, $150	695 00		
Gilbert, Hannah W	.....	..	29 97
Two shares First National Bank, Salem, $223; one share National Exchange Bank, Salem, $112; half house (Waters), $1,500; half house lot (Waters), one-quarter acre, $275	2,110 00		
Nichols, Sally A	.....		
Cow, $60; honse, $450; barn, $100; (exempted), $500—$50; shop, $50; homestead, three-quarters acre, $175; Graves land, three and five-eighths acres, $125	460 00		
Noon, John	.....	1	2 70
Duncan, James	.....	1	265 40
Twenty-one horses, $2,500; fifteen three year olds, $600; seven buggies, $350; fifteen top carriages, $1,600; five express wagons. Jenny Lind, two horse carts and four lumber wagons, $600; large sleigh and eighteen single sleighs, $800; twenty-two harnesses, sixteen robes, blankets and whips, $500; house, $1,900; barn and carriage house, $400; wood-house, $100; barn and shed (livery), $1,200; house (Dewing), $900; two barns (Dewing), $1,000; barn (Ayres), $50; homestead, one-quarter acre, $1,000; barn lot (livery), one-quarter acre, $1,500; Dewing land, seventy-five acres, $3,000; Ayres land, ten acres, $500	18,500 00		

First. A system characterized by features generally analogous to the system of Massachusetts and Connecticut, was prepared and recommended by the joint committee on taxation, in 1862 and 1863 and the Legislature to whom it was presented and all subsequent Legislatures, have refused to consider it.

Second. The convention assembled in pursuance to law in 1867–68 to form a new Constitution for the State of New York; spent much time in the consideration and discussion of this very subject, and finally adopted the following provision, known as section 15 of article 8, relating to the finances of the State:

"*Real and personal property shall be subject to a uniform rule of assessment and taxation.*"

On the subsequent submission of the Constitution to the people this section, by direction of the Legislature (act of April 24, 1869) was voted upon separately and independently, with apparently a full understanding, from the debates of the convention and other public discussions, that the effect of its ratification would be to thereafter disallow indebtedness to offset or diminish the valuation of any description of property for the purposes of assessment and taxation a rule which, practically, would amount to the taxation of credits or indebtedness the same as absolute property. The result was that the proposition was signally disapproved, the popular vote against it ratification and adoption being 273,260 in a total vote of 457,211. And it is a curious circumstance worthy of note, as showing the extent to which members of the convention mistook the sentiment of the people on this subject, that the vote of the districts of several of the delegates who confidently and explicitly assured the convention that the measure was most popular, was subsequently either very small in favor or altogether adverse to its ratification. An analysis of the vote upon this article also shows that, while the majority in the counties containing the large cities almost uniformly and largely voted against its ratification, the vote of a large number of the less densely populated or agricultural counties was also in the same direction; as, for example, the counties of Sullivan, Oneida, Fulton, Hamilton, Chemung, Clinton, Columbia, Delaware, Dutchess, Genesee, Greene, Herkimer, Lewis, Niagara, Orleans, Oswego, Richmond, Rockland, Saratoga, Schoharie, Schuyler, Ulster, Wayne, Yates, etc.

In view of these circumstances, therefore, it would seem to be to no purpose, even if it were deemed expedient, for the commissioners to recommend for adoption, a system which the Legislature and

the people of New York have so recently and so unmistakably indicated that they will not sanction.

But supposing these objections to be removed, and that the Legislature and the people were willing to reconsider and reverse their prior determinations, the more important question yet remains to be considered, namely: Will the adoption by New York, of a system of taxation analogous to that of Massachusetts, remedy the inequalities and imperfections now existing and complained of, and in the end prove alike expedient and beneficial to the State? And in answer to this, the commissioners would say, that the system of Massachusetts, which is probably carried out more efficiently and intelligently than any similar system in any other State, fails according to the acknowledgment of its most experienced officials, to obtain in the city of Boston, at least *thirty* per cent of the personal property existing within the city limits and liable to taxation; and in the city of Dorchester, where, in common with the rest of the State, it may be presumed that the law is less efficiently executed than in Boston, the valuation of the entire property in 1869, as already shown, was nearly thirty-three per cent below the standard as established in Boston.

In Connecticut also, as has been before stated, the amount of personal property that escapes taxation under a similar system, is estimated at *forty per cent;* while the failure of the system in Cincinnati and Providence is unmistakably demonstrated by the circumstance, that in both of these cities their valuation lists of personal property are known to fall off in consecutive years very largely (often to the extent of millions), while the aggregate valuation of real property continues to advance uninterruptedly and with great regularity.* Now, if the *thirty*, *forty*, or larger percentage of personal property that escapes taxation under the most favorable circumstances represented a uniform deduction from the value of all property of such character liable to assessment, as is the case when a percentage of the value of real estate is uniformly taken as the standard of valuation, there would be an equality of assessment of any one man in this respect as compared with every other (the comparative assessments of real and personal property, not being taken into account). But such unfortunately is not, and never can be the case; inasmuch as it

* In Cincinnati the valuation of personal property fell off from $68,412,000 in 1867, to $61,583,000 in 1868, and $58,471,000 in 1869, while the valuation of real property increased during the same time from $68,569,000 in 1867 to $69,799,000 in 1868, and $72,243,000 in 1869. In Providence, R. I., the valuation of real property fluctuated from $43,618,000 in 1868, to $42,162,000 in 1869; while the valuation of realty increased during the same time from $49,107,000 to $50,908,400.

is known to every one, who has ever given the slightest attention t the subject, that that portion of personal property which alway escapes taxation is the one which is best able to bear it; as capita not permanently invested but used for speculative purposes; negoti able instruments, national, State and other bonds, affording either b stipulation or conditions of purchase a high rate of interest; mone lent on collateral; costly personal effects, plate, jewelry, furniture etc.; while the portion that never escapes taxation is that whos exemption would most conduce to the interest of the State; as machin ery, tools, implements, ships, canal boats, etc., the cost of all o which, whenever, and however increased is always reflected upon th cost of production; or mortgages, the taxation of which almos invariably tends to increase the rate of interest to those who mainly borrow on such security for the purpose of building or otherwis improving real estate. And it must be farther remembered that a the requirements of the State for revenue are imperative, the failur of any portion of a given description of property to meet its rela tive liabilities, necessarily increases the burden that must be imposed upon the remainder.

Taxation of Indebtedness.

Again, another difficulty which presents itself in endeavoring to carry out a uniform rule of valuing and assessing all property, both real and personal, grows out of the question of indebtedness, and which, as before stated, was the real question involved in the fifteenth section of the eighth article of the Constitution of 1867–8, rejected by the people.

In Massachusetts the laws do not allow indebtedness to offset or diminish the amount of tangible property, the only allowance for liabilities being a provision of law that debts due *from* may be deducted from, or offset, debts due *to* the person to be taxed (General Statutes, chap. 11, sec. 4); but no debts are allowed to offset or decrease actual property, which is assessed to the holder (except consigned goods), even although the larger part or the whole of such property is purchased upon credit. Thus, to take a particular case for illustration: A merchant in Boston worth $100,000 capital, and goods in store to the value of $500,000, would be assessed upon the average amount of goods held during the year preceding the first day of May ($500,000 if he was replacing goods as fast as he sold), and also for any money he might have on hand May 1st, and the profits made during the year as income. (See General Statutes of Massachusetts, chap. 11, sec. 4.)

"But," to quote from the communication of a Massachusetts official on this subject, "as Boston construes that section, so much of the income only would be taxable as was withdrawn from business, as in taxing his business we should assess all of his profits that were allowed to remain there; other municipalities, however, construing the law differently, would tax the whole profit (income) less $1,000. The point has never as yet been decided by the courts as to which construction is correct."

In Connecticut the law provides, "that the average amount of goods kept on hand for sale during the year shall be the rule of valuation and taxation; but merchants shall also be liable to be assessed for any amount of credits and debts due them from responsible persons over and above their liabilities." And any merchant may have a deduction from his list for debts owing by him to residents of this State "when the debt is liable to be assessed and set in the list of the person to whom the same is due, as money at interest."*

Now, in looking at these provisions of the tax systems of Massachusetts and Connecticut, it would seem as if they presented indisputable evidence upon their very face that the law in respect to the taxing of indebtedness never is and, from the very necessity of the case, never can be effectually carried out and enforced. In proof and illustration of this, let us apply the example, before quoted by the Massachusetts officials, of the merchant with $100,000 capital and an average stock of $500,000 of goods bought upon credit to the city of New York.† The rate of taxation in New York city for the current fiscal year being 2.27, the amount which the merchant would be liable to pay would be equivalent to 11 3-10 per cent upon his capital; to which, according to the Boston custom, there would be further added a tax at the rate of 2.27 upon all money on hand on the day of assessment, and also upon all income realized from business during the preceding year. If the business was carried on in the city of Brooklyn, the aggregate percentage levied upon the capital of the merchant, in the place of being 11 3-10, would be 19 3-10; in Albany, 22-8; in Rochester, 33 5-10. And to these amounts, if we

* This provision of law proposed in Illinois on this point is as follows: "In making up the amount of moneys and credits which any person is required to list for himself, he shall be entitled to deduct from the gross amount of moneys and credits, the amount of all *bona fide* debts owing by such person for a consideration received; but no acknowledgment of indebtedness not founded on actual consideration, believed when received to have been adequate, and no such acknowledgment made for the purpose of being so deducted, shall be considered a debt within the meaning of this section."

† In the debate in the constitutional convention in New York, on this subject, in 1867–68, cases were cited by a delegate where merchants or firms in New York, with a capital of half a million were constantly carrying stocks of goods or securities, promissory notes, etc., to the extent of from three to five millions.

would know the cost of the capital employed, there must be also added the rate of interest which the capital costs, or is worth independently, viz., seven per cent. And again, if the system of Massachusetts was to be applied equitably in New York (and unless it is so applied the tax assumes the character of a mere arbitrary exaction or confiscation), an institution like the Park Bank, in the city of New York, with a capital, on the 1st of October, 1870, of $2,000,000, and money and securities, in addition, in its possession (for which it is indebted), to the extent of $21,441,000, would be taxed upon all the securities it holds, and on all the property in its possession; or not being allowed to deduct in the assessors' valuation its indebtedness, would be practically taxed 2.27 on $23,400,000, or at the rate of twenty-six per cent on its capital. Now, it needs no argument to show that no business in any location could stand such an onus of taxation and survive; and, therefore, we have a right to infer that although such a system is *nominally* carried out in Massachusetts and Connecticut, it is nevertheless in some way rendered practically inoperative.

The above examples also afford a practical illustration of the truth of that economic principle in taxation, that the productiveness of a tax is not its first consideration to favor; and that the benefit which accrues from an amount of revenue specially collected may fall far short of compensation for the blight resulting to the State from the manner of taking it—a blight which ruins the harvest which it cannot gather.

But it may be said that, with a uniform and full valuation and assessment of all descriptions of property, such rates of taxation could never occur. In answer to this it may be said that, in Boston, where such a system nominally prevails, the rate for the current year is 1.53; which, in the case of the merchant above referred to, would tax his capital to the extent of 7 6-10 per cent; and in the case of the bank to 15 2-10. And, furthermore, under this system of valuation and assessment, the rate of tax in Massachusetts rises not unfrequently to two per cent, and sometimes as high as 3.20, 3.33 and 3.89.

And yet at the same time, it is difficult to see how a system which proposes to tax all personal property uniformly can be made to work with any degree of success, unless the right or privilege to offset or diminish valuation by indebtedness is strictly and explicitly forbidden, inasmuch as it is this very right or privilege which furnishes the opportunity whereby personal property can most successfully evade taxation. Nothing is more easy than to create debts for the purpose of diminishing valuation, which no investigation on the part

of the assessors will suffice to prove fictitious, and yet of such a character that individuals of easy conscience will find no difficulty to making oath to their validity. In the debate which took place on this subject in the constitutional convention of 1867–68, numerous examples were given by delegates of expedients of this character which had fallen under their observation,* and the chairman of the finance committee declared "*that in the country and the towns and cities in the interior of the State, the rule is almost universal for persons to get up an indebtedness of some kind or other, so that their property may escape taxation.*" One of the most common and successful methods now resorted to is the taking of an unfair, but apparently strictly legal, advantage of the law exempting the securities of the United States from taxation. Thus, for example, an individual desiring to evade taxation on capital invested in general mercantile, or speculative business, first purchases U. S. bonds, we

* In the country, and in the towns and cities in the interior of the State, the rule is almost universal for persons to get up an indebtedness of some kind or other so that their property may escape taxation. Some persons will give notes to their children; others will exchange notes with their neighbors; and others will enter into obligations for the purpose of creating a liability, just about the time the assessors come around.—*Hon. Sanford E. Church; Debates Constitutional Convention; vol.* 3, *page* 1932.

"It would be well to particularize some of these attempts to get rid of taxation. Among other things, sir, we have official bonds given by different officers holding places of trust at the hands of the people, either locally or as State officers. Such officers find no difficulty, in the positions which they occupy, in not only getting a number sufficient for their purpose, but in absolutely having persons ask the privilege of getting on these official bonds; and then these persons, by a sort of conscience which I do not understand, when the assessor shall come around, in their minds consider this a liability which they may possibly be under the necessity of meeting in dollars and cents, and thus calming their consciences in regard to the matter—swearing off their personal liabilities to taxation.

"I will take another case. The State of New York, in its operations, is in the habit of receiving large amounts by way of canal tolls, and is under the necessity of making the deposits in the locality where they are received. And they ordinarily select banks of good standing, with abundant surplus beyond their capital. But under the rule which governs, they require, in addition to the bonds of the bank itself, in its corporate capacity, the bonds of individuals, for the purpose of securing the State against any possible loss or deficit. And, sir, you will find very many of the banks in the interior, where the entire of the directors become jointly and severally holden in a specific sum, by way of penalty, to protect the State from any loss that might be occasioned. And, in very many instances, I know that these men, each of them, although the bank is abundantly good and able, both in its capital and in its assets beyond its capital, and each and every one of the individuals is able, three or four times over, to pay the amount he has thus become quasi-security for, uses that as one of the items of their liability to reduce their taxation upon personal property. I take it that they have no real ground of law for this purpose; but they acquit their conscience in regard to the matter, and get rid of taxation in that way. I know a case in my own county where an individual, unquestionably one of the wealthiest men in the county, and that wealth largely consisting of personal property in bonds and mortgages, having a large family of children, who had grown up to years of discretion, and who had become workers in the world, who kept his day-book in this way: As he received money from A, B and C, upon mortgages, he first credited to the parties who had executed the mortgage, and then he gave credit on the book to the individual son or daughter, from time to time, for the money received from that mortgage; but never, in any one instance, does he make the assignment that the law contemplated for the purpose of passing the mortgage; and never, in any one single instance, does he pay over to his children the identical moneys thus received. But when the tax gatherer comes around he has no personal property."—*Hon. Thomas G. Alvord; Proceedings and Debates; vol.* 3, *pp.* 1936–7.

may suppose, to the amount of $100,000. He then borrows on his promissory note, using the bonds as collateral, $100,000, or some smaller sum, and invests the money so obtained in the business in question. When the day of assessment comes round, a return is made, under oath, if need be, of $100,000 business capital; $100,000 just debts and liabilities; no personal property subject to taxation. If inquiry is made further respecting the U. S. bonds purchased, the answer is made legitimately, that in respect to these the State authorities have no jurisdiction. Since the commencement of the present year, moreover, a case involving this very principle of exemption, has been brought before the supreme court of New York (general term, Jan. 3, 1871), by the tax commissioners of the city of New York, and a decision given in favor of its legality;* thus illustrating how difficult it is, holding on to a system of universal taxation, to once exempt any description of intangible, incorporeal property from assessment, without at the same time opening a door to innumerable opportunities from fraud and evasion. And it should be further borne in mind, that this door has been most effectually opened, both by national and State authorities, and that it is now entirely beyond the power of any individual State to close it.

Of other methods by which U. S. bonds or notes are made available for the purpose of evading taxation, the following may be also mentioned: Thus, in the case of savings banks, it would seem most reasonable that if any moneyed capital is to be subject to taxation, that the surplus of such institutions, which practically is "nobody's property," should be; especially since the deposits in any savings

* SUPREME COURT OF NEW YORK, Jan. 3, 1871—(Before presiding Justice Ingraham and Judges Barnard and Cardozo)—*Assessment of Personal Property—The People ex rel. Benjamin T. Babbitt* vs. *The Commissioners of Taxes and Assessments for the City of New York, Respondents.*—The relator in this case was, in April last, assessed by the commissioners of taxes of this city, on his personal property on $250,000. He claims that, on the 1st of January, 1870, his personal property and assets, other than certain bonds of the United States government, amounted in the aggregate to $345,895.97; and that his debts on that day were $356,084.49; that between Jan. 1 and April 1, 1870, the liabilities and debts of the petitioner increased, and that at the end of April, the excess of debts over his assets was greater than on Jan. 1. On the 29th of April, 1870, he addressed to the respondents a written notice, duly verified, to the effect that he was not liable to taxation in any amount for personal estate, and requested them to strike his name from the assessment rolls. From this statement, it appeared the relator was the owner of $250,000, commonly known as five-twenties, which had been purchased by him in the years 1865, 1866 and 1867, for permanent investment, which bonds he claims are by law exempt from taxation. The petitioner, therefore, insisted that as his debts exceeded the amount of his personal property, aside from the bonds mentioned, he was not liable to be assessed or taxed in any amount for personal estate, and that those bonds could not be taken into consideration for the purposes of taxation, either as a part of his capital, or for the reduction of his debts and liabilities. The respondent declined to accede to this, but gave the relator notice that they had reduced his assessment to $200,000. From such decision an appeal was taken to this court, which after hearing gave judgment in favor of Mr. Babbitt.—*Press Report.*

bank which are due to depositors are by law not liable to taxation. Yet in 1867 the following ingenious law was enacted:

"The privileges and franchises granted by the Legislature of this State to savings banks or institutions for savings are hereby declared to be personal property and liable to taxation as such in the town or ward where they are located *to an amount not exceeding the gross sum of their surplus earned (after deducting the amount of such surplus invested in United States securities).*" It seems unnecessary to add that after this the amount derived from the taxation of the surplus of savings banks was very inconsiderable.

The commissioners have received letters from various parts of the State pointing out instances of inequalities or evasions of taxation, as in the case of the savings banks above noticed, and asking that remedial measures may be devised and presented to the Legislature. As an illustration of these the following may be quoted: "A. B. is worth over $1,000,000. He is what is called a 'banker.' His deposits are supposed to be not less than $1,000,000 in easy times. For many years he has discounted no paper except the city's, and for this exceptional favor he has the city's deposits. Instead of loaning money to help business here, he keeps all save enough money to pay checks invested in governments. Then he states, on oath, if required, that all his money is in governments, and that the few hundred thousands in his vaults belong to depositors. Thus, last year, he paid taxes on less than one twenty-fifth part of the real value of his property. I do insist that such cases should be reached, and I fearlessly affirm that the oppression occurring from fraud and official laxity in this place in the matter of taxation, and this place is but a (perhaps bad) sample of the municipalities of the State, is abundantly sufficient to justify combined and forcible resistance on the part of the aggrieved."

Now the commissioners have given the above extract from one of the numerous letters addressed to them, omitting names and places, although not so requested to do, because they believe that in the discussion of questions of this character the attention of the public can be more certainly secured by specific and actual illustrations rather than by abstract reasoning. But at the same time, after examining the case referred to in all its relations, they must, while acknowledging the grievance, frankly say they are at a loss to know what remedial measures are practicable. The bonds and the notes of the United States, in which the individual in question may claim that his capital and deposits are invested, are by national law made free from taxa-

tion, and in respect to this the State of New York can do nothing; while the attempt to go back of an oath and investigate would involve such an amount of personal inquisition, litigation, expense, and the exercise of arbitrary power, that although practicable in isolated instances, it would not as a general thing be tolerated for one moment by the public.

Another circumstance which does not seem to have generally commanded attention, is the fact, that since the war and its entailed burden of debt and taxation, the savings banks of the country have in a degree changed their original character. It is very true, that they continue as before to be the depositories and custodians of the savings of the poor; but they have also, to a very great extent, become the depositories of those who are not poor; and this for the purpose on the part of such depositors of escaping taxation. Thus, during the past year, a year in which the remunerations of industry have been notoriously unsatisfactory; a year of falling prices, small sales, numerous strikes, and an unusual suspension of manufacturing operations by reason of an unprecedented drought, the deposits of the savings banks of the country have been in excess of those of almost any former year, in New York to the extent of about $40,000,000, and in Massachusetts to nearly $24,000,000. It is obvious, therefore, on the very face of this statement, to use the words of the Governor of Massachusetts in his recent message, "that a large share of this increase is not the savings of labor," and that "each year shows more deposits by capitalists."

In short, the recent increase of the deposits in the savings banks of New York and New England does not constitute proof, as is often averred, that the country is in a highly prosperous and satisfactory condition, but the tendency of its showing is rather the other way. Formerly the deposits in these institutions represented in great part the hard-earned accumulations of persons who were entirely dependent for support upon the wages received for the performance of daily routine labor, such as operatives in factories, day laborers, mechanics, needlewomen, clerks and small traders. Now, however, in consequence of the exemption of these institutions from taxation, or their subjection to a reduced rate, they are made use of by a class of persons for whom savings banks were never designed, and who have, in fact, no moral right to avail themselves of their eleemosynary character; and, therefore, the single fact of a recent rapid accumulation of deposits in these institutions, "does not," to quote from the report of the bank commissioners of Massa-

chusetts (1867), "afford any evidence that they are performing the beneficial work expected of them." * It was in recognition of this state of affairs, that the Legislature of Massachusetts, in 1868, increased the State tax on savings banks from one-half of one per cent to three-quarters of one per cent; and the Governor of the State, in his recent message (January, 1871), suggests that this rate be even further increased.

The anomalous character of the deposits of the savings banks of New York is also well illustrated by the following extract from a letter addressed to one of the commissioners, under date of Rochester, Nov. 21, 1870:

"The stocks of corporations legally taxable in this city aggregate over $1,300,000. The aggregate assessment of 'personal' in 1869, the latest figures in my possession, was $1,568,300. Assuming that these stocks *were* (although they, in fact, were not) assessed according to law, there would remain $268,300 as the taxable 'personal' of our whole population, aside from their investments in local stocks! The savings bank deposits, January, 1869, amounted to $6,680,590.83; deduct 'personal' (in excess of stocks) assessed 1869, $268,300, and we have an excess of $6,412,290.83 'personal' in the single form of

*As further illustrations of the correctness of this position, an instance may be given of one savings bank in Massachueetts, which having some years ago but about $200,000 of deposits, was taken in hand by a retired capitalist, anxious to develop its possibilities, and in the short space of three years carried up to a capital of $700,000, the accumulation being all drawn from the population of an agricultural district. This result was accomplished by a process of active solicitation, through the press and by printed circulars, calling on the people to bring in their money, and promising to pay seven per cent for it, free of taxes. The whole neighborhood was absolutely drained; mortgages, loans to mechanics, and small manufacturers, were called in, and an extreme stringency occurred in the local money market.

In the year 1868 the statistics of the savings banks of the manufacturing city of Lawrence, Mass., showed 7,568 depositors, out of a population of 28,000, of whom 9,000 were operatives directly employed in the mill. But of this number of depositors only one-fourth were operatives.

The report of the Massachusetts bureau of labor statistics (March, 1870, pages 307–8), makes also this statement concerning the character of the depositors in that State:

"A gentleman whose official position gives him a knowledge in the premises, which entitles what he says to credit beyond question, testifies that the ordinary depositors in savings banks (in Massachusetts) are, as a general rule, from the lowest class of laborers, and are mostly Irish, who starve themselves that they may acquire. The better educated and informed American workmen do not, and cannot save; because their education, their manner of life, their home requirements, their sense of responsibility to wife and child, and home, make demands, and by no means unreasonable ones, which their sense of duty in every relation justify them in meeting."

Another circumstance which has recently tended abnormally to increase the capital of savings banks, is the dearness of real estate and of such stocks as were generally within the reach of this class of investors. Once a few hundred dollars would purchase for a mechanic or laborer a decent house, but such has been the increase of prices resulting from a depreciated currency and high taxation, that a far larger sum is now required to purchase a home, and when it is obtained the taxes and repairs on it are a heavy burden. Thus the savings bank has become the depository of funds waiting for the return of better times—of lower prices and settled values. It certainly cannot be regarded as a symptom of healthy social condition, when the laborers of the country are in this manner prevented from acquiring homes for their families and an established interest in the country and its prosperity.

savings bank deposits, above the aggregate of 'personal' exclusive of stocks legally subject to taxation in 1869. In other words, these deposits, composed of money, amount to *twenty-five* times the amount of personal assessed in excess of taxable stocks."

"In view of these and similar facts which abound in all moneyed centers where savings banks exist, I respectfully submit that these institutions should cease to be regarded simply as depositories for the earnings of 'domestics, day-laborers in the country and the like;' and be treated rather as the hiding places of which capitalists avail themselves in order to escape from taxation."

It will be alike appropriate and interesting for the commissioners to here call attention to the system adopted in taxing savings banks in the State of Connecticut, as constituting one of the curiosities of taxation especially worthy of record. The State, in the first instance, imposes a tax of *three-fourths* of one per cent on the whole amount of deposits and stock in such institutions; and then, in consideration of this and all other taxes (*i. e.*, United States internal revenue tax of one-fourth of one per cent on dividends), the banks are permitted to add a compensatory amount to the legal rate of interest on all their loans, and to take the interest in advance; the effect of which is to throw the whole amount of taxation, with possibly some addition for profit, off from the bank on to the borrower, who in most, and perhaps a majority of cases, is a man of small means, who borrows for a purpose of local development; or, in other words, the whole system is an ingenious plan for imposing a little more taxation on a class which the State can least of all afford to tax, and that, too, not on their property, but upon their debts. If any more ingenious method of arresting State development has been devised, the commissioners have not been able to discover it; and as a short argument for an opposite policy, they would call attention to the following suggestions of the Governor of Massachusetts in his last annual message, which suggestions, it may be observed, apply equally well to the taxation of mortgages as to the loans of savings institutions:

"It may be wise for the Legislature to place some wholesome check on this tendency of the banks to exact high interest. The burden falls heaviest upon the small borrowers, who are the least able to bear this exaction. It is for the public welfare that every man of moderate means should have a homestead, and every inducement should be held out to him to exert himself to obtain one; but it is discouraging for him to find that he cannot effect a small loan with-

out being compelled to pay a rate of interest which will absorb a large share of his surplus earnings."

Use and Value of Oaths.

It is customary with many in discussing these subjects to propose a renewed requirement of oaths, and an increase of their stringency as a remedy for the difficulties under consideration; but the commissioners are constrained to say, that it is the all but unanimous opinion of officials who of late have had extensive experience in the administration of both the national and State revenue laws, that oaths as a matter of restraint, or as a guarantee of truth in respect to official statements, have, in a great measure, ceased to be effectual; or in other words, that perjury, direct or constructive, has become so common as to almost cease to occasion notice. In fact, there has come to be a feeling in the community, that an oath in respect to matters in which the government is a party, is a mere matter of form, of mechanical procedure, and that its violation, especially with a mental reservation, and when the interest of other individuals is not specifically affected, does not in itself constitute a crime. The fact that the assessors of the State of New York, in common with those of the other States, every year make oath that they have valued all property for assessment at its actual value, constitutes one proof of the truth of the above position; the every day entry of goods at the custom house at undervaluations constitutes another; the enormous frauds committed within the last eight years under the internal revenue laws of the United States, which in the case of distilled spirits alone, entailed a loss in a single year of over $130,000,000, and in which the taking of false oaths was at every step an essential feature, constitutes a third; while of individual examples detailed by assessors to the commissioners, and which seem to have been retained in memory only through some peculiarity of audacity or singularity of discovery, the record would be almost interminable. A single instance in which the facts were indisputable may be, however, related. In one of the cities of New York, an individual of prominence and standing in the community, was assessed some ten years since, for personal property, to the extent of $20,000. The first year of such assessment he swore down the valuation to $15,000; and continued thereafter to reduce this amount annually, under oath, by the sum of $1,000, until the year 1869, when he acknowledged personal property to the extent of only $1,000. That year he died; and as the narrator expressed it, "passed to a tribunal where oaths

could be inquired into." On the settlement of the estate during the succeeding year, the amount of personal property returned by the surrogate for division among the heirs, was in excess of $150,000.

During the past few years, the low tone of commercial morrality in the United States has been a fact generally recognized and much commented upon; but it has not, that we are aware of, been made the subject of inquiry, by those to whom the guardianship of public morals is particularly intrusted, how far the existing system of laws relating to taxation and revenue, national and State, are justly chargeable with the results referred to; or how much in the division of responsibility, is to be set down to the account of those who violate the law, and how much to those, who forewarned of the weakness of human nature, deliberately make laws which especially lead men into temptation.

French Legislation in Respect to the Taxation of Personal Property.

It is well known that one of the principal causes which led to the first French revolution, was the inequality and multiplicity of taxes, and especially of those on personal property (*fortune mobiliere*); and one of the first acts of the National Assembly of 1789, was to repeal all inquisitorial taxes of every nature and character. The ground which was substantially taken by the committee to whom this subject was subsequently referred, and of which M. de Fermon was the chairman (*rapporteur*), and Larochefoucauld and the Bishop of Autun (Tallyrande) members, being as follows:

1st. That a system of taxation which necessitated personal and arbitrary inquisitions for its execution, was inconsistent with the maintenance of a free people. 2d. That the prescription of oaths in cases where self-interest tempted the citizen to swear falsely, and where from the very nature of the case the determination of the exact truth was most difficult, was in itself prejudicial to the morality of the State. The national convention of France, having therefore, as already stated, repealed all laws authorizing inquisition and oaths as conditions preliminary to assessment and taxation, substituted on report of their committee, in the place of direct taxes on personal property, a taxation of the *indicia* or signs which each individual may present of his possession of such property; and further recognized the rent, or rental value of the premises which each person occupies as such signs or *indicia*. And from that time every inhabitant of France, whether citizen or foreigner, has paid in place

of any tax on his personal property, a tax on his rent or rental, which in 1867–8, was fixed by law at *one-twentieth* part of the rent paid by each resident, but only for the portion of the building which serves as a residence. If the individual resides in his own house, he pays the amount which would be payable if the apartment he occupies were let to a tenant.*

Alexander Hamilton's Views in Respect to Taxation.

It is not generally known, furthermore, that Alexander Hamilton, as a member of the conventions which framed the Constitution of the United States, and the first Constitution of New York, gave all his influence in favor of the restriction of all internal or local taxation to visible, tangible objects, and to the assessment of these specifically and by some uniform and simple rule. The language used by him in one of his papers (the Constitutionalist), on this subject, is as follows: "The genius of liberty reprobates every thing arbitrary or discretionary in taxation. It exacts that every man, by a definite and general rule, should know what proportion of his property the State demands. Whatever liberty we may boast in theory, it cannot exist in fact while (arbitrary) assessments continue."

Taxation of Mortgages.

We come next to the consideration of the taxation of mortgages. A universal and uniform system of taxation, according to the popular acceptation, would of necessity require that mortgages of real estate should be taxed in common with and at the same rate as all other securities and property; and under the tax systems of New York, Massachusetts, Connecticut and most of the other States, they are so taxed. During the sessions of the Constitutional Convention of New York in 1867–68, and in the reports of the recent commissions for revising the taxation of the different States, and elsewhere, there has been much discussion in respect to the questions, whether in estimating for assessment the valuation of real estate encumbered with a mortgage, the amount of the mortgage should be deducted from the valuation, on the assumption that an individual should be taxed on what he owns and not on what he owes; or, if the deduction be not allowed, whether the mortgage itself should be also taxed as

* As stated, this tax is paid by every inhabitant not reported indigent; but in many towns and cities, and in Paris in particular, the municipal council in order to aid the poorer classes or those paying rents below a certain sum, by a sort of contract with the imperial government were in the habit of compounding for the tax by paying a certain fixed sum in place, from the municipal revenues.

personal property, the advocates of exemption of the latter averring that by so taxing, the same property would be in fact subjected to double taxation.

In the Constitutional Convention the weight of opinion seemed to be that if the present practice of allowing indebtedness to offset the valuation of personal property was to be recognized, that the deduction of the value of mortgages from the value of real estate should also be allowed; or, in other words, that there should be a uniform rule of valuing and assessing all property. And the Convention so reported; but the proposition, as already stated, was rejected when submitted to the people for ratification.

The New York commission of 1862–63, for the revision of taxes, reported a law to the effect, "that the *net value only* of every person's taxable estate, whether invested in land or in any other species of property," should be taxed; and that the taxes levied on mortgaged real estate should be proportionably assessed on the land and on the possessor of the mortgage, and that the mortgage thus assessed should not be otherwise taxed. The commissioners of New Jersey and Connecticut, on the other hand, came to an exactly opposite conclusion, and recommended that both the land and the mortgage be taxed on their full valuation, holding that the two are independent property, and that the taxation of both would not be, therefore, double taxation.*

On this subject further the writers on taxation and political econ-

* The opinion of the New Jersey commission, of which the State chancellor was a member, is expressed as follows:

"Taxes on property are defined to be the tribute which that property owes to the State, for the protection, security, and consequent value it receives from the government of the State. The protection so received is *commensurate with the property held*, and not with the sum, or balance, the holder may be found to be worth. If the owner of land be indebted to his creditor for the value of the land, and this indebtedness be represented by note or bond, the land is one property, and the note or bond another. Each is protected by the law, and each owes its tribute to the law. They are in no sense the same, different in their natures, their titles, and the uses to which they may be put. Each may be sold and transferred by the holder, without regard to the other; nor does the note necessarily represent, or depend for its value on the land. It may be paid by other means and other property; by the industry, the labor, or the future services of the maker. For all other purposes the note and the land are regarded by the law, and are treated, in fact, as distinct and valuable things. Why should they not be treated as such in the laying of taxes? The credit is given, and the note, or bond, or mortgage is made, because the convenience and advantage both of buyer and seller are thereby subserved. The buyer prefers the one property, the seller the other. *Taxing each property once, is not double taxation.*"

The Connecticut commission, quoting the above opinion, adds:

"We hold these views to be sound, and that all property under the full shelter of the law, should pay tribute for that shelter, according to its protected value, without regard to any questions of indebtedness or securities, incidentally growing out of it. These questions of indebtedness, erroneous in principle, and offering motives for the creation of fictitious debts for offset, have ever been, and must ever continue to be, a prolific source of dispute and vexation in their adjustment, and continually calling for legislative changes."

omy in Europe never touch, for the reason that none of them accept the idea of the feasibility or expediency of taxing any personal property whatever *directly;* but in the United States it has been discussed at some length by at least one authority in political economy (Hon. Amasa Walker, "Science of Wealth," pp. 338, 339), who holds to the theoretic view, that it would not be in opposition to the principles of political economy and not inequitable, to tax alike both the land and the mortgage; and in not allowing an abatement in the valution of the former on account of the latter.*

But whatever may be the theoretic view of this question, there is one safe rule or test which may be relied on for guidance; and that is the rule or test of experience. And all experience shows, that in a country like the United States, where land is relatively abundant and cheap, and moneyed capital scarce and dear, whatever interposes between or obstructs the connection of capital and land, works to the detriment of, and retards the development of the State. Let us reason about this matter.

The landowner desires the use of capital in order to improve his property; it may be to drain it, fence it, build on it, or otherwise

* Mr. Walker's reasoning on this subject is as follows:

"It has been sometimes mentioned that credits ought not to be taxed, but all assessments be made upon values or property, personal or real. Taxes, it has been argued, ought not to be laid upon persons, but upon that out of which they can alone be paid, viz., property.

"But credits are taxed as well as values. A holds a farm worth $10,000, mortgaged to B for $5,000. A pays taxes upon the whole valuation, and B upon $5,000, as money at interest. A is said to be doubly taxed.

"This is a practical question, that has puzzled legislators in every age and country. Let us, therefore, carefully examine it.

"Suppose A and B aforesaid form an entire community, and that the whole tax of $150 is imposed on property. The whole valuation will then be $10,000 (A's farm), and the rate one and a half per cent, which A pays, and B goes untaxed. We will now change the principle, and have both property and credits taxed. The valuation will then be: A's farm, $10,000, and B's money, at interest, $5,000; total, $15,000; and, with the same amount to be assessed ($150) the rate will be one per cent, of which A pays $100 and B $50. So, then, we discover that A is not doubly taxed, as assumed, but at the worst pays only $50, or one-third more than his share. Such must, in principle, be the result of this kind of taxation, taking a whole community together. All the amount taxed upon credit is so much relief to taxation upon property. This seems to be clear; and the justice of this is established by the fact that A bought his farm, knowing that it would be subject to a full taxation, and bought it cheaper on that account. B, on the other hand, accepted his mortgage on the same ground, knowing it would be subject to tax on the common valuation. Is either party, then, wronged?

"But perhaps another reason may be given why A should pay taxes on the whole value of his farm, viz., that having the usufruct of the whole he is entitled to all the profits on the farm. 'But he don't own the whole of the farm.' True, that is his misfortune; if he did, he would obtain a larger amount of net profits; but his obligation to pay tax on the whole is not impaired, because he has the use of a part of B's capital. As owner of the farm, A has a chance for all the profits that can be made from the whole; while by the taxation of B on the mortgage the former saves a part of what he would otherwise pay in taxes. One pays taxes for the profit of business—the other for the income on his capital.

"That much hardship may often result from taxing credits as well as property, is undoubtedly true; but that only affords evidence that the income tax principle is the correct one."—*Science of Wealth: pp.* 338, 339.

improve. It is especially for the interest of the State that this should be done: to increase the area and amount of its crops; to provide comfortable and abundant homes for its citizens and working classes; to attract population; and, to speak plainly, increase the value and amount of real, tangible property, such as shall serve as a basis of, and not evade, taxation. But the capitalist is entitled to and will have the legal rate of interest on his money; and abundant opportunities are afforded him for obtaining that, and even more; as by investing in national, State and railroad bonds, exempt by law from taxation, or sold at a discount sufficient to compensate for taxation; or in bonds and mortgages on real estate in New Jersey and Pennsylvania, or in many of the western States and cities, or in Connecticut, where the statute allows the lender of money on mortgage to add to the legal rate of interest the rate of taxation and also the premium for insurance; or in ground rents, a condition of which may be that the taxes are to be paid by the occupier.

On the other hand, the State of New York, by taxing mortgages, virtually says to the lender of money on these securities, "You shall not have in return the legal rate of interest;" for the mortgage, being a matter of record, cannot be concealed, and accordingly, by requirement of law, is usually taxed at its full valuation. But it is obvious, if it is so taxed, that the investor generally will receive not only less than the legal rate of interest, but less than would be afforded by an investment of his money in almost any other security. Nay more, there have been instances in New York in which the holder of a mortgage, if taxed according to law, would lose not only his entire interest, but would further be obliged to pay a sum additional for the privilege, as it were, of holding such an investment. Thus, for example, a mortgage in New York city cannot to-day, without a violation of the usury laws, or a dereliction of duty on the part of the assessors, or except purchased at a discount, yield over $4\frac{7}{10}$ interest; in Brooklyn, $3\frac{1}{10}$; in Albany, $2\frac{4}{10}$; and in Rochester, but *three-tenths of one per cent*; and as the rate of taxation in the latter city in former years has been in excess of seven per cent, it is clear that money loaned on real estate mortgages in that locality must have theoretically paid more in taxes than it received in interest.

In reviewing these facts, the question naturally suggests itself, how long can a people, so eminently practical as the Americans, tolerate such absurdities? And how long is it to be expected that the gifts of God, in the way of natural resources, will continue to

ppliment the absence of sense and discretion in the business of gislation?

The result which has taken place in New York is exactly what ight have been legitimately expected. Capital which formerly und its way into real estate mortgages, is now directed into other annels; and to such an extent, that, were it not for the provisions law which exempt the mortgage investments of savings banks d life insurance companies from taxation, and compel these insti-tions to invest a part of their capital in such securities, money uld now hardly be obtained in New York for the improvement of l estate on pledge of the property. Again, it was formerly a ry general custom to embody in wills a provision that property queathed, or to be held in trust, should be invested in mortgages; t this custom the commissioners are informed, is now almost tirely done away with, while executors and trustees are continu-y importuned by legatees to change the character of such invest-nts on the ground that they no longer continue to afford a fair erest. In one instance, the commissioners were frankly informed a board of assessors, that their feelings as men would not allow m to assess mortgages according to the strict provisions of the , when they knew that by so doing they would deprive widows l orphans of almost their entire income. In another instance it s pleaded, that the interests of a city would not allow its assessors tax its local mortgages, inasmuch as so doing would inevitably trict growth, and that a certain annual growth or land improve-nt was absolutely essential in order to prevent the rate of taxation, reason of annually increasing expenditures, from becoming bearable.

The legislation, and experience of the State of Connecticut on s question are also worthy of notice. This State (act of 1860) ed mortgages at their full valuation, the same as other personal perty; but provided, that as between residents of the State, ebtedness might be deducted from valuation, when, at the instance the debtor, the debt could be transferred for taxation to the list the assets of the creditor. Subsequently (1862), finding probably t this last provision did not facilitate the loan of money on mort-e, an additional law was enacted which reads as follows:

No contract shall be deemed usurious by reason of the borrowers' ing, or agreeing to pay, the taxes assessed and paid on the sum ned, or the insurance upon the estate mortgaged to secure the ue;" the practical effect of which is most obviously to throw the

whole onus of the taxation on to the debtor and entirely exempt th creditor; or comparing the legislation of New York and Connec cut, the former virtually says to the real estate owner, "you sha not borrow at all on the security of your property for its develo ment;" while the latter accords permission to borrow on conditi that a rate of interest, coupled with the most perfect security, is pai at least (in the cities), two per cent greater than the legal rate, a greater than is taken for the loan of money under almost any oth conditions.

On the other hand, New Jersey and Pennsylvania with a wis experience, have as before shown, entirely exempted mortgages fro taxation over a large part of their territory, and will, undoubtedl at no distant day make the exemption universal. And here occ points to which special attention should be given, viz.: In both these States, it is represented to the commissioners, that the dema for this exemption came not in any degree from the capitalists, b from the small landholders, particularly those of the working classe and further, that the influence of the exemption has been most ben ficial to the districts affected by it, so much so, to use the words one conversant with the question, "that if it were possible to take as from an eminence, a view of the whole State, the counties in whi mortgages were exempt from taxation would be as readily d tinguished from the others as would be a field of luxuriant whea or corn from a field of scrub-oak or brush-wood."

It should be also here stated that, apart from any desire for general revision and reform of the tax laws of the State, the evi resulting from the present system of taxing mortgages have alread compelled the attention of an influential portion of the people of th State; who, in turn, have memorialized the Legislature on the subje In particular, the chamber of commerce of New York, on the 20t of February, 1870, in accordance with the report of a special co mittee appointed to examine the subject, petitioned the Legislatu to pass a uniform law, "exempting from taxation all bonds an mortgages and liens on real estate, when the real estate has bee taxed at its full assessed value;" * and, in accordance with the praye

* The following is a copy of the petition of the New York chamber of commerce, above referred to

The chamber of commerce of the State of New York respectfully petition your honorable bodi to enact a law uniform in its applications throughout the State, exempting from taxation all bon and mortgages, and liens on real estate when the real estate has been taxed at its full assessed valu for the following reasons:

First. Th e property having been once assessed, cannot be justly taxed a second time.

Second. The present mode of taxing real estate in the first instance for its assessed value, and afte ward the debt created by the mortgagor as a lien on the same for the money borrowed and used b

f this and other petitions, a bill, of which the following is a copy, as introduced into the Assembly at its last session, but failed to eceive consideration :

SECTION 1. All money now and hereafter to be loaned, secured by mortgage upon lands in the State of New York, is hereby exempted om taxation.

§ 2. This act shall take effect immediately.

But, notwithstanding this failure of consideration, the commissioners are of opinion that whatever else may be acceded to in the way f reform in the existing system of taxation, the interests of the tate of New York, and the discriminating legislation of the conguous States of New Jersey and Pennsylvania, imperatively require nat the exemption in question should be granted; and furthermore, nat so far from diminishing the taxable property of the State, the ffect of such exemption will be (at least, after a little time) to greatly ncrease it:* and at the same time prevent the diversion of a large

m in the purchase and improvement of the real estate already paying its fair proportion of the xpenses of State or municipal government, is unfair and unjust, because one kind of property is us compelled to pay a greater tax than another kind of equal value.

Third. It is unfair to the development of the real and material interest of this State, because it olds out strong inducements to capitalists to invest their surplus means, either in United States nds, which are entirely exempted from tax by federal laws, or in railroad bonds, State bonds, or mortgages on property in other States, which are exempted by their local laws from taxation.

Fourth. It cripples enterprise; prevents the mechanic from obtaining full and profitable employcnt, in consequence of the difficulty experienced by persons of limited means in borrowing from pitalists, who refuse to lend on mortgage, because they are at once taxed on the amount, whenever, r their own security, they have placed it on record in the office of the county clerks; and besides is, the present law discriminates against persons residents of this State. If they loan money on nd and mortgage they are taxed upon the amount, while a resident of a neighboring State can lend oney on the same property and entirely escape taxation in this State.

And last, this taxation is really borne by the debtor and working class of the community. It a notorious fact that it is difficult, almost entirely impossible, to obtain money on mortgage at ven per cent per annum, when mortgages of undoubted character can be largely purchased at a scount of three or five per cent per annum, the capitalist thus compelling the debtor to pay the x. Thus, while the best security known, that of a lien on real estate, should command money at e lowest rate, it really has to pay the highest in consequence of the operation of unjust laws.

*The following argument in answer to the averment that the exemption of mortgages from taxaion, will diminish the taxable property of the State, is derived from an address recently delivered fore one of the land and building associations of New York city, by W. H. Peckham, Esq.: "Capil is the product of human labor. Men labor and use capital in order to increase that capital; in her words, to make a profit. That profit is the source or subject matter of taxation, and there is other. If one man owns capital, and another, by his permission, uses it, agreeing to return it at l events, the proportion of the profits of the use paid to the capitalist is interest; what that proortion is, will depend upon the proportion of demand and supply of loanable capital and upon the fety of the security offered. It is certain, however, that no loans can be made at a rate which the rrower cannot pay, and at the same time make the average rate of profits out of the transaction in hich he uses the capital borrowed. If he cannot, he discontinues the business. Now, if one man as capital and loans it to another for use, that use is the sole source from which not only interest nd profits, but from which *taxes* can be paid. If the lender takes security by way of mortgage or herwise, such security does not increase the property or capital of the community. The increase omes from the *use* of the capital lent. A man has a ship, or a mill, or other property worth $10.000, nd sells it to another on credit, taking back a mortgage for the $10,000. Or he has $10,000 and loans to another, who with it buys the ship or mill he wants, and secures the loan by mortgage on it.

amount of the legitimate capital of the State from seeking investm beyond its borders.

As an illustration of the manner in which such capital has be diverted, of late years, from employment in connection with r estate in New York, the commissioners would call attention to t report made to them, to the effect, that, while in 1859 the f insurance companies of New York, with assets of $26,323,3 loaned on bond and mortgage $19,801,094; in 1869, with ass amounting to $53,722,655, they loaned on similar security l $13,611,232. At the same time, the directors of the largest s ings banks in the State inform the commissioners that the appli tions made to them to loan on the security of real estate of unqu tioned value, for the purpose of its improvement, are continually a largely in excess of the amount available for such investments.

At present, a large proportion of the capital of insurance and tr companies of the State is invested in governments; but it is rep sented to the commissioners by those who profess to know, that if law exempting mortgages on real estate from taxation was on enacted, that the companies in question would very largely disp of their bonds and invest their assets according to the original c tom; and that a similar action by private capitalists, to whom t perfect security which real estate offers for loans is always an indu ment, would in a short time afford an ample supply of capital f

By reason of the sale there are not two properties of $10,000 each; one the ship or mill, and other the mortgage. The profits made by the mill are the only source of taxation.

"Whether you levy the tax on the mortgagor or mortgagee, or partly from each, it is from th profits that the whole tax must be paid. If you tax that property directly in the hands of the m gagor as high as it will bear, you cannot get a penny of tax from the mortgagee, for if you tax l also, he will refuse to loan unless the mortgagor pays it, and the mortgagor being unable, will borrow. Relieving mortgages from taxation, then, is not decreasing the taxable property of State; it is but a mere abandonment of that indirect method of taxing real estate. It is of p cisely the same character as would be the giving up the custom duty on an article and taxing it the hands of the consumers in place thereof."

"I next claim that the exemption of mortgages will not exempt mortgagees from their fair prop tion of the burden of taxation. In the prosecution of any business the State has the first right its proportion of the profits in the shape of taxes before the balance is divided between the len and the borrower. This amount, however, the State fixes at an arbitrary figure, based upon the s which the average business can on an average pay, and still leave an average margin for interest a profits. Some business may prove a loss, but the State still exact its arbitrary average. Some m be extraordinarily successful, but the State demands only its ordinary average. The State m always be paid, but always only its fixed rate. The consequence is, that the market rate of inter is based upon the proportion given to secured capital of a business that has already paid the tax in full. When, then, we say that the market rate of interest is seven per cent, we mean seven p cent clear of tax, and the fair division of the profits after payment of the tax, will always adj itself as between lender and borrower, by the rise or fall of interest. If you should diminish t rate of taxation, the lender would get his proportion of the benefit in greater rate of interest, a if you increase it, he would bear his portion of the burden by getting less. In other words, the m ket rate of interest is adjusted on the basis of existing taxation, and is always the net amount fair belonging to the lender after the payment of taxes."

mortgage investments at rates less than the legal rates of interest, in place of the eight, ten, or even a larger percentage which the borrowers on mortgages are now compelled to submit to. The effect of this would be unquestionably to stimulate building and land improvement, afford new opportunities for labor, enlarge the market for building material, and rapidly increase the visible, tangible wealth of the State.

Other Conditions affecting the Taxation of Personal Property.

Another point of great importance in connection with this subject, and one which the commissioners do not think has ever before been discussed as a separate and independent topic, is the consideration, how far personal property, from its very nature, from the conditions which govern and control human action, and from the action of laws, national and State, is placed beyond the jurisdiction of the State for assessment and taxation. Many of the points involved in such an inquiry, although hitherto atttracting but little attention from the public, are sure, in the future, under the weight and vexation of taxes, to be very closely scrutinized; and as the commissioners have found very frequently that officials in this State and elsewhere, are acting in what seems to be plain disregard of the principles of equity and the decisions of the highest courts, an extensive litigation and demands for reclamations may almost certainly be predicated.

In preparing the way for the construction of a new or improved system of taxation, it is obviously, therefore, of the highest moment to fully consider what property, by legal or natural conditions, is either wholly removed from State jurisdiction, or placed in such a doubtful position as to render clear and explicit legislation, or subsequent efficient administration concerning it a matter of difficulty. And as possessing or partaking of such a character, the following descriptions of personal property may be enumerated:

First. Imported goods, wares and merchandise, in original packages, in possession of the merchant importer.

The power of a State to tax property of this description was definitely settled, in the *negative*, by the supreme court of the United States in the case of *Brown* v. *The State of Maryland* (12 Wheaton, 449); the question involved being the legality of a license tax imposed by the State as a prerequisite to the right to sell an imported article. The court (Chief Justice Marshall) held, that this tax,

though indirect in form, was in fact equivalent to a duty on imports, and therefore illegal; and that the right to import carried with it a right to sell. This decision has been carefully recognized by State authorities in dealing with imported liquors under local license laws; but in the levying of State or municipal taxes on personal property, the commissioners have reason to think that it has not been thus recognized, especially in the New England States; and that ground thereby exists for extensive reclamations. It is obvious that in the case of the State of New York, which, through her great city and northern frontier towns, is both the entrepot and the place of sale of a large proportion of all the imports of the United States, the effect of this decision is to remove, beyond all question, an immense amount of personal property from all jurisdiction of the State in respect to taxation.

Second. Bonds, notes and other securities or evidence of indebtedness of the United States.

The national law and the decisions of the courts on this subject are clear, explicit and well understood. Viewed from the standpoint of "tax resources" alone, the country is to be congratulated that so large a proportion of these securities (almost one-half, or one thousand millions,) have passed into the possession of foreigners; but what remains in the possession of our own citizens, besides being specifically exempt from all taxation, are undoubtedly made the *instruments* whereby a much larger amount of property than they represent is enabled to successfully evade assessment. It is through this agency that fire and life insurance companies evade taxation to a very great extent upon their assets, and savings banks upon their surplus. Thus, the fire insurance companies of New York city, with a capital of about $24,000,000 and an estimated surplus of $11,000,000, making a total of $35,000,000, were assessed in 1870 on a personal property valuation of only $9,240,965, and a real estate valuation in addition of about $3,000,000.

Third. The deposits and the surplus of the savings banks of the State.

The amount of personal property thus removed from taxation approximates the large sum of over $200,000,000. All this property being, however, within the jurisdiction of the State, the exemption of the same from taxation is a matter dependent wholly upon legislative action.

Fourth. Indebtedness.

In specifying this head, the commissioners would not be understood as recognizing the principle that the debt obligations of individuals are legitimate objects of taxation, but simply that indebtedness is a method by which, as already shown, a vast amount of property evades taxation. But as the refusal to allow indebtedness to offset valuation would, if thoroughly carried out, be destructive of commerce and business, and as the people of New York, by recent popular vote, have, in fact, decided against the adoption of any such rule in the valuation of property, the commissioners, therefore, feel warranted in considering that an amount of personal property, equivalent at least to the aggregate of the real indebtedness of the citizens of the State, is at all times exempt from assessment.

Fifth. Personal property belonging to citizens of New York, but actually situated out of the State.

We now come to the consideration of a class of cases involving questions of a difficult and intricate character, viz.: in respect to what determines, under various conditions, the *situs* of personal property; and about which there has been, from a most remote period, and still is, a conflict of laws, and a present different and wholly discordant rule of practice in the different States."

The ordinary rule or fiction of law (*mobilia personam sequentur*) is, that all personal property follows the person of the owner; and, accordingly, for purposes of taxation, personal property has been generally held to have no *situs* away from the person or residence of the owner, but is deemed to be present with him always at the place of his domicile.

In Massachusetts the law defines personal estate for purposes of taxation to include, "goods, chattels, money and effects, wherever they are; ships, public stocks and securities, stocks in turnpikes bridges and monied corporations *within or without the State.*

The law proposed by the tax commissioners of New Jersey in 1868, also defined the *situs* of personal property of the citizens of that State in similar language: "Goods and chattels of every description, wherever they are."

The law, and the practice under the law, for the assessment of personal property, is also substantially the same in Rhode Island and Connecticut as in Massachusetts, except that the law of Connecticut provides "that it shall not be necessary to include in the list of any

person liable to be assessed, any property situated out of the State when it can be made satisfactorily to appear to the assessors that the same is fully assessed and taxed in such State, to the same extent as other like property owned by citizens of such State;" and also exempts "money or property actually invested in the business of merchandising or manufacturing, when located out of the State." In Massachusetts and Rhode Island no such liberality is tolerated although the lack of it obviously tends to, and actually does result in, double taxation; and in a case recently tried before the supreme court of Connecticut (*Sprague* v. *The Town of Lisbon*), the plaintiff, a citizen of Rhode Island, sought to recover taxes assessed on personal property in the form of machinery in a cotton mill located and working in Connecticut, on the ground that the same was taxed to the owner in the State of Rhode Island as personal property.

In the State of New York, up to the years 1861–62, the rule of assessment of personal property appears to have been in accordance with that now recognized in Massachusetts and Rhode Island, viz: that it follows the owner under all circumstances; but in that year a case of much importance was carried up to the Court of Appeals under the following circumstances: One Hoyt was taxed in the city of New York for personal property, and resisted the taxation on the ground, that, although he had personal property outside of the State he had none within the State, in excess of his just debts and liabilities; the property in question without the State being capital employed in business in New Orleans, and farm stock and household furniture in New Jersey, each taxable by local law in the States where situated. The court of appeals, decided the assessment to be illegal, and held (Comstock, C. J.) that the property was actually situated in other States, in other sovereignties, protected by their laws and taxable there, and therefore it ought not to be subject to a second taxation in New York.

The court also in rendering the decision, used the following language: "There seems to be no place for the fiction" (that personal property follows the owner) "in a well adjusted system of taxation; in such a system a fundamental requisite is that it be harmonious, but harmony does not exist, unless the taxing power is exerted with reference exclusively to either to the *situs* of the property, or to the residence of the owner. Both rules cannot obtain, unless we impute inconsistency to the law and oppression to the taxing power. Whichever of these rules we find to be the true one, whichever we find to be founded in justice and the reason of the thing, it necessarily

excludes the other; because we ought to suppose, indeed, we are bound to assume, that other States and governments have adopted the same rule. If then, proceeding on the true principles of taxation, we subject to its burdens all goods and chattels actually within our jurisdiction without regard to the owner's domicil, it must be understood that the same rule prevails everywhere. If we proceed in the opposite rule, and impose the tax on account of the domicil, without regard to the actual *situs*, while the same property is taxed in another sovereignty by reason of its *situs* there, we necessarily subject the citizen to a double taxation, and for this no sound reason can be given."

"To put a strong case, the owner of a southern plantation,* with slaves upon it, may prefer to reside and spend his income in New York. Our laws protect him in his person as a citizen of the State, and for this the State receives a sufficient consideration without taxing the capital which it does not protect. Under our laws, can we tax the wealth thus invested in slave property? They ignore, on the contrary, the very existence of such property; therefore there is no room for the fiction, and only according to which the *situs* is supposed to be here. But if we could make room for that fiction, it still remains to be shown that some rule of reason, or principle of equity can be urged in favor of such taxation."

"We may reverse the illustration. A citizen, a resident of Massachusetts, may own a farm in one of the counties of this State, and large wealth belonging to him may be invested in cattle, in sheep or horses, which graze the fields, or are visible to the eyes of the taxing power. Now, these goods and chattels have an actual *situs* as distinctly as the farm itself. Putting the inquiry, therefore, with reference to both, 'are they real estate, and personal estate,' so as to be subject to taxation under that definition? It seems to me that but one answer can be given to this question, and that answer must be according to the actual truth of the case. If we take the fiction instead of the truth, then the *situs* of these chattels is in Massachusetts, and they are not within this State. The statute means one thing or the other; it cannot have double or inconsistent interpretations; and as this is impossible, so we cannot, under and according to the statute, tax the citizen of Massachusetts with respect to his chattles here, and at the same time tax the citizen of New York in respect to his chattels having an actual *situs* there.

The decision of the court of appeals in this case was delivered in June, 1861.

In both cases the property must be within this State, or there is right to tax it at all."

The commissioners would adduce another authority in respect the sovereignty of a State over the *situs* of property.

"Every nation possesses and exercises exclusive sovereignty a jurisdiction throughout the full extent of its territory. It follo from this principle, that the laws of every State control of right the real and personal property within its territory. The seco general principle is, that no State can, by its laws, directly affe bind, or regulate property beyond its own territory. This is a co sequence of the first general principle; a different system whi would recognize in each State the power of regulating persons things beyond its territory, would exclude the equality of righ among different States, and the exclusive sovereignty which belon to each of them." (Wheaton's International Law, chap. 11, section *Fœlix Droit International.*)

The conclusion from the reasoning and principles of law, abo given, would, therefore, seem to be inevitable; that the practice Massachusetts, Rhode Island, and other States in taxing property a visible, tangible character, situated beyond and without their ow territory, is contrary alike to the spirit of international or intersta law, to the just powers of any State, and to the principles of justice a equity. In New York, as already shown, the decision of her highe court has made such taxation, both as regards present practice an future law, inadmissible; but, while in accordance with such decisio New York has, since 1861, exempted from taxation personal pr perty of her citizens of a visible nature, or of the nature of chatte when the same is situated without the State, especially when a specif demand has been made on the assessors for such exemption, it ha nevertheless been held by officials that personal property, in the natu of negotiable instruments, bonds and mortgages, stocks, and choses i action are taxable to residents of the State, irrespective of what ma be their actual *situs*. But for the present it is sufficient to call atte tion to the fact that a large amount of personal property, which i many other States in virtue of the exercise of arbitrary power is the subject to taxation, is in New York exempt from assessment by th decision of her courts and in recognition of the principles of equity.

Sixth. Property in transitu.

Under this head it is proposed to consider another class of personal property, which through a judicial determination of its *situs* has also been exempted in New York from taxation.

It is obviously inexpedient, and as an interference in respect to interstate commerce, clearly in conflict with the Constitution of the United States, for any State to subject to taxation property merely *in transitu* through its territory. But as to the extent to which personal property may be held to be in such condition, and be thereby exempt from taxation, is a question which in New York has been in part, at least, reviewed by its highest judicial tribunal. The point in controversy, and which was made the subject of a decision by the Court of Appeals, was, in respect to the liability to taxation of the goods of a non-resident owner, sent to New York for sale, and the proceeds of which sale were not reinvested within the State. The question came up under the following circumstances: The Parker Mills, a corporation foreign to New York, manufacturing nails, in the State of Massachusetts, had established a depot and agent in the city of New York, to which the nails were transmitted for sale. Its only business within the city of New York consisted in making such sales, the proceeds of which were remitted at once to the corporation in Massachusetts; and where sales were made upon credit, the securities received were sent to the corporation for collection. The tax commissioners of the city of New York, held that the corporation was conducting business in the city, and assessed it on the value of the nails in store, regarding that value as the amount or sum invested in said business in New York. The payment of such assessment being refused, the case first came before the supreme court, which affirmed the proceedings of the tax commissioners; but the Court of Appeals (Selden, J.) reversed the decision, and held that the case was not included in the act of the State (chap. 37 of 1855, sec. 1), which imposes taxes on the capital of non-residents employed within the state in a continuous business; and that it was never the policy of the State to impose taxes upon the property sent into its territory for the mere purpose of sale. The court further held, the goods sold by the agent of the Parker Mills, to be property *in transitu;* the same in principle with the case of a drover, resident of another State, who transports his herds of cattle by railroad to the city of New York for sale.

Since this decision, firms or corporations established in other States, but selling their own goods, exclusively, in New York, although

permanently located for such purposes of sale, in respect to their stores, warehouses, or agents, have been held to be exempt from taxation; an exemption which discriminates most unfairly and injuriously against citizens of New York, who, manufacturing or selling in the cities of the State, are subjected in general to a much higher rate of taxation on their property. For example, three stores on one of the principal business streets of New York city, were pointed out by the commissioners of taxes. The first and third stores were occupied, respectively, by the agents of manufacturers located in Philadelphia and Connecticut, paying no taxes to the city on their general business. The second store is occupied by a citizen of New York selling goods of his own manufacture, and this individual is assessed and pays taxes on a valuation of $100,000. The theory is, that the goods sold in stores Nos. 1 and 3 are taxed to a corresponding extent at the places of their production; but such is not the case; for so much as are manufactured in Philadelphia are not taxed directly at all, while those manufactured in the country districts of Connecticut pay taxes which, in comparison with those of New York city, are very inconsiderable.

It is, however, to be observed, that in the case of *The Parker Mill* v. *The Commissioners of Taxes in New York City*, the decision above referred to turned upon the assumption by the court of appeals, that the laws of New York did not authorize the taxation of property brought within the territory of the State for sale; but the court did not discuss or question the right or power of the State to tax such property in case the same should be deemed expedient. Since the rendering of this decision, however, such a right on the part of a State to tax goods or merchandise brought within its territory for sale, has been affirmed by the supreme court of the United States, provided the State subjects similar property, the product of its own citizens, to a like taxation. For further notice of this extraordinary decision, reference is made to Wallace's Reports (vol. 8, p. 138, *Woodruff* v. *Parham*), or to the appendix to this report, where an abstract of the case is given, and also of the dissenting opinion of Justice Nelson, who took ground that if "a State can tax the sale of an article, the product of a sister State, in the original package, when imported into the former for a market under the Constitution of the United States, then no security or protection exists in this government against obstructions or interruptions of commerce among the States; and one of the principal grievances that led to the convention of 1787 and to the adoption of the federal constitution, has failed to be

remedied by that instrument; and, hereafter, this interstate commerce is necessarily left to the regulation of the Legislatures of the different States."

But with the power to tax property brought within the State from other States, exclusively for sale, thus vested beyond dispute in the Legislature of New York, it seems certain that expediency can never allow of its exercise, inasmuch as to exercise it would be to strike a most fatal blow at the present commercial and mercantile supremacy of the State.

Seventh. Negotiable instruments.

It is an interesting fact that it is only within a comparatively recent period that "negotiable instruments," in the generally accepted sense of such term, have become of sufficient importance by reason of their amount, to warrant a special consideration in the United States in a scheme of taxation; but latterly, through the creation of a vast national debt and the enormous credits requisite to meet the recent expenditures of States, municipalities and corporations, they have come to form the largest single item of the personal property of the country. In considering the taxation of such instruments, three questions naturally suggest themselves: 1st, the question of practicability; 2d, of expediency; 3d, of the extent of the jurisdiction of a State over such instruments for the purpose of taxation.

And *first*, in respect to the question of the practicability of taxing such instruments, it is to be observed that as property, or representatives of property, they are especially capable of transference and concealment. In fact, as they ordinarily exist, they may be said to be invisible property; and hence it is obvious, that in order to subject them or their possessors to direct taxation, some process of personal inquisition is necessary; a matter always difficult, but made more so in this case, for the reason that the subjection of these instruments to taxation (especially in cities, where they are mostly held) is tantamount to rendering them incapable of possession; for no one at the present time will permanently hold securities paying only four and a half, three, two, or a fraction of one per cent per annum; which is the rate which railroad and State bonds must in general pay in New York after the local rates of taxation are deducted from their interest. The simple statement of the case, therefore, renders it evident, that either negotiable instruments are not held in the State of New York, or they are not taxed. The State of

Connecticut, making use of the system of personal inquisition, taxes, theoretically, these securities at their full value and, theoretically, has driven them out of her territory. We say theoretically, for, if it was the custom in Wall street for bankers and brokers to have an almanac in which predictions pertinent to their occupations were set over against particular dates, we should find entered just previous to the first of October (the day of assessment in Connecticut) this memorandum: "*Expect large supplies of bonds from Connecticut about these times;*" and from the 15th to the 31st of October another entry to this effect: "*Bonds begin to go back again to Connecticut.*"

2d. But if negotiable instruments from the very nature of the case are either not taxed, or if taxed, not held, the question arises: Is it expedient to attempt to tax them? or, if expedient, is it not preferable to abandon the attempt at direct taxation, and adopt the Pennsylvania method of taxing directly the interest paid by corporations, and requiring the corporations to become responsible for its collection? Again, if the effect of an *actual* and direct taxation of these instruments is to drive them from the jurisdiction of the State (as would to a great extent be undoubtedly the case), then, it may be asked, is not the State subjecting its citizens to restrictions more onerous than those to which the citizens of any foreign or some kindred States are subjected? Is it not interfering with a movement of capital which in the end will be restrictive of development? Is it not, in substance, saying to itself, to its railroad and other corporations: You cannot borrow money for works of public necessity or utility in the home market; or, if you do borrow, you must either directly or indirectly pay an excessive interest; and, if such interest is paid, does the public gain anything? Or, figuratively, does it not put into one pocket only as much as it takes out of the other, less the cost of collection? The prediction is often made, and the hope indulged, in view of the immense natural resources and the increasing wealth and population of the United States, and the further fact that the march of empire tends steadily westward, that New York city, at no distant day, will become the moneyed center for the civilized world. But this can never be so long as New York imposes restrictions on the concentration and movement of active moneyed capital, which do not exist in other and financially competitive nations. If a Mexican or British colonial railroad or State improvement loan, for example, were tendered to the New York market, and if financial or political reasons should render it expedient that such loans should be there taken, it could not be done, for the reason that the State taxa-

tion of to-day would, of necessity, require New York bankers and capitalists to demand nearly *fifty per cent* more of interest than would be asked by their foreign competitors. Is it not time, therefore, that we put an end to this indulging in predictions of our future, and in bragging of what we are going to do, and rather set ourselves to work to practically consider what it is that stands in the way of our doing; and whether if, with freedom continually upon our lips, we are not continually sanctioning laws and practices which are not only inconsistent with freedom, but also obstructive to growth and development. The commissioners would not, however, be understood in this as pleading for the exemption of moneyed capital from taxation, for they are not, in any way, assuming such a position; but they are pleading that the State, in dealing with such property for the purpose of obtaining revenue, should not tax it in a way as to place the State and its great city at a disadvantage, as compared with every other commercially and financially competitive country.

3. The consideration of the extent of the jurisdiction of the State over negotiable instruments for the purpose of taxation opens up again a new series of questions, involving the *situs* of personal property under different conditions, of much novelty and of not a little intricacy. As already stated, the general practice in New York has been, and still is, to hold, that, however it may be in respect to visible personal property, or property in the nature of chattels, invisible personal property—*i. e.*, bonds, promissory notes, choses in action and the like—have no *situs* away from the owner, and are therefore always taxable to the owner at his place of residence or domicile. As bearing, however, upon such assumption and practice, the commissioners would especially ask attention to the following judicial opinions and decisions, which are for the most part of recent date and closely connected with the recent increased incidence of taxation.

In the case of the *British Commercial Life Insurance Company v. The Commissioner of Taxes of the City of New York* (18 Abb. R., and 31 N. Y. R., p. 32), the Court of Appeals held that negotiable bonds owned by foreign insurance companies, and deposited, under compulsion, with the State comptroller, have a *situs in this State*, and are deemed money in business within the meaning of the act of 1855; and that the companies are properly taxed at the place where they have their principal office, or place of business within this State. And as in accordance with the above decision negotiable instruments or bonds, the property of foreigners, brought into New York for the temporary purpose of pledge, are taxed,

it is evident that New York adopts two opposite and inconsistent rules for the determination of the *situs* of such property: First, that it follows the owner, and must be taxed where the owner is; and, second, that it does not follow the owner, and must be taxed where the property is located, or actually is. Again, in respect to the capital of citizens of a State invested without the State, the decisions of the New York Court of Appeals (23 N. Y., 232) and of the supreme court of Vermont (23 Vt., 152) would seem to warrant the conclusions, that a resident of New York is not liable to be assessed and taxed in this State for his capital invested in loans in other States upon securities taken and held in those States by his agents. Whether the owner of property thus situated is liable to be assessed for it in New York, depends upon the question whether it can be properly and legally held to be within the State at the time of the assessment; and if such property has no actual location or *situs* within the State, notwithstanding the owner's residence is here, it would not seem to be here subject to taxation.

Furthermore, the principle that *personal property does follow the owner for the purposes of taxation*, would seem to be opposed by the following facts and decisions:

1. England, Austria, and Italy, tax non-resident holders of their national debts at the place where the debt is held to have been created or inscribed.

2. Attachments or processes of law are valid against all personal property in the nature of negotiable instruments, in the place where such instruments are situated, irrespective of the domicil or residence of the owner.

3. In the recent case of *Maltby* v. *The Reading Railroad*, the plaintiff, a non-resident of Pennsylvania, resisted State taxation on a railroad bond issued by the defendants, and secured by a mortgage on their road, on the general ground that the property taxed was wholly personal, and followed the owner out of the State. The supreme court of Pennsylvania (Woodward, C. J.) sustained the validity of the taxation, on the ground that a railroad mortgage bond is a mere paper evidence of property existing at the place where the bond was created, and used the following language:

"The plaintiff cannot enforce the bond where he lives; he must come here to gather its fruits; it is founded upon and derives its value from a mortgage; but that mortgage is here, and the property and franchises which the mortgage binds are here within our jurisdiction. The bond signifies his right to recover so much money out of the

mortgaged estate, but that estate not only belongs to our jurisdiction, but was in part created by our authority."

4. In the case of the *Ohio and Mississippi R. R. v. Wheeler* (1 Black U. S. R., 286), it was held by the supreme court of the United States that when a corporation is created by the laws of a State, the legal presumption is that its members are citizens of that State in which alone the corporate body has legal existence. Hence the inference seems warranted, that the stock of a corporation does not follow the person.

5. *The principle that two States cannot at the same time tax the same property, and that a State cannot tax property and interests lying beyond its jurisdiction*, has been also apparently affirmed by the supreme court of the United States (December, 1868) in the case of the *Northern Central Railroad* v. *Jackson* (6 Wallace, 262). The railroad corporation in question, extending from Baltimore in Maryland to Sunbury in Pennsylvania, was the result of the consolidation of four railroad companies; one incorporated by the State of Maryland, and three by the State of Pennsylvania. The latter State imposed a tax of three mills per dollar of the principal of each bond issued by such consolidated road, which tax the company at their office in Baltimore deducted from the coupons of bonds held by one Jackson, a non-resident of Pennsylvania. The court, by Mr. Justice Nelson, decided adversely to the tax, on the ground that the bonds were issued upon the credit of the line of the road, a portion of which was within the jurisdiction of the State of Maryland; and that the security bound and pledged for the payment of the bonds and their interest, embraced the Maryland portion of the road equally with that portion situated in the State of Pennsylvania; respecting which condition of affairs the court used the following language:

"It is apparent if the State of Pennsylvania is at liberty to tax these bonds to the extent of this Maryland portion of the road, she is taxing property and interests beyond her jurisdiction. Again, if Pennsylvania can tax these bonds, upon the same principle Maryland can tax them; this is too apparent to require argument. The consequence of this, if permitted, would be double taxation of the bondholder. The effect of this taxation is readily seen; a tax of three mills per dollar of the principal at an interest of six per centum, payable semi-annually, is ten per centum per annum of the interest; a tax, therefore, by each State, at this rate, amounts to an annual reduction from the coupons of twenty per centum; and if this consolidation of the line of the road had extended into Virginia, or Ohio,

or into both, the deduction would have been thirty or forty. *If Pennsylvania must tax bonds of this description, she must confine it to bonds issued exclusively* by her own corporations. Our conclusion is, that to permit the deduction of this tax from the coupons in question would be giving effect to the acts of the Pennsylvania Legislature upon property and interests lying beyond her jurisdiction."

In face of this decision, it is a question of no little pertinence for the Legislature of New York, and its commissioners, to consider what position shall be taken in a new tax system in respect to this class of property, *i. e.*, mortgage bonds, issued by railroad or other corporations without the State; and also by what right New York, Massachusetts, Connecticut and other States now tax such securities directly, under the assumption that their *situs* is at the place of their owner's domicile, and not in the place where they are actually situated or created.

6. In the foregoing cases, the *situs* of negotiable instruments in the form of bonds has been considered. Let us next examine how far the generally received fiction of law, that "personal property follows the owner," holds good in respect to promissory notes and other like evidences of property.

In the case of *Pelham* v. *Rose* (9 Wallace, 106), it was held by the Supreme Court of the United States, that a promissory note is a physical thing, capable of possession; and cannot be regarded as attached by an United States marshal, until the note itself was actually taken possession of by the officer. Hence the inference that a negotiable instrument of this character has a *situs* of its own, and does not as personal property, necessarily follow the owner.

In the case of *McNeilage* v. *Holloway* (1 Barnwell & Allison's Reports, 218), the court of King's Bench, England, Lord Ellenborough, C. J., presiding, it was decided that negotiable instruments are *chattels personal*, and that a negotiable note payable to the order of an unmarried woman, becomes the property of her husband without her indorsement, on the ground that it was not a *chose in action* but a chattel personal. If this decision, which is the law of England, is correct, it would seem to follow that all negotiable instruments of this character, have their *situs* in the place where they are found, and follow the same rule as respects taxation and attachment as applies to other chattels personal. Taxation, consequently, imposed on all species of property of this nature in States where the property is not actually existing, is unconstitutional as much so

as it would be to tax real estate and farm stock in one State that are situated in another State. "In truth, such instruments (negotiable instruments) are treated not as mere choses in action, but rather as *chattels personal.* Choses in action are not assignable by law; and actions must be brought thereon in the name of the original parties. But negotiable notes are transferable by indorsement; and when transferred the indorser may sue in his own name." (Story, Conflict of Laws, § 359.)

In another English case *The Attorney-General* v. *Bouvens* (4 Meesson & Welsby, 171, 190), Lord Abinger decided, clearly and explicitly, that Russian, Danish and Dutch government bonds, payable to bearer, have a *situs* where they are actually situated, and may be there taxed for probate duty. He says: "Such an instrument is in effect a *saleable chattel*, and follows the nature of other chattels as to the jurisdiction to grant probate." He cited the case of the *Attorney-General* v. *Hope*, decided by the House of Lords, where it was held that registered stocks of the State of New York and the United States, owned by an Englishman dying in England, were not subject to probate duty, on the ground that they were *not* negotiable instruments which pass by delivery, and which are *chattels personal*, having a *situs* where found; and that the application of the probate duty depends upon the physical question of locality. In England, negotiable instruments are subject to attachment and sale, and since the enactment of 1 and 2 Victoria, 110, § 12, are subject to execution; and it seems to be a well settled principle of law, both in that country and in the United States, that such instruments have a *situs* and may be proceeded against *in rem.*

In fact, this class of instruments could not continue to exist as agencies of commerce and as forms of investment, if it was decided that they did not have a *situs* where found. If the *situs* of a bond payable to bearer is not with a vendor, he cannot convey title in case of sale, to a *bona fide* purchaser. Certainly no prudent man would buy negotiable instruments in open market if he was liable to be confronted by a claimant who alleged that at the time of the purchase here, he was the owner of the negotiable instrument and a resident of a distant State or country where was the *situs* of the instrument, and where was consequently the legal title.

In New York, bank notes are subject to executions and all forms of negotiable instruments are subject to attachment and sale as the property of non-resident debtors. In case of attachment, we sell the available value of these instruments in the market; we do not

proceed against the debtors; we sell the instruments as chattels. It would seem that the constitutionality of the attachment laws of the various States against negotiable instruments cannot be seriously questioned. The *situs* is the main element in a negotiable instrument payable to bearer; and the decision in the United States court in the case of the *Northern Railroad* v. *Jackson* (7 Wallace, 262), before referred to, that double taxation by different States is unconstitutional, would seem to decide, in harmony with the decisions of the English courts and those also of the continent, that the State where the actual *situs* of negotiable instruments (*not in transitu*) is, must be the only place where a constitutional tax can be levied, and that in case of conflict of jurisdiction, the actual *situs* must control; a principle, indeed, explicitly affirmed by the supreme court of the United States in the case of *Green* v. *Van Buskirk* (7 Wallace, 139), which came up on an appeal from the New York courts. (See appendix B.)

Taxation of Trustees.

Before leaving this department of inquiry, it is important to call attention to an apparent defect in the existing State statute, which, if not already taken advantage of for the exempting of property from taxation, would seem to afford abundant opportunity for so doing, especially in respect to property the control and actual *situs* of which easily passes by possession and physical transfer. The first volume of Revised Statutes, 389, provides that "Every person shall be assessed in the town or ward where he resides when the assessment is made for all personal estate owned by him, including all personal estate in his possession, or under his control as agent, trustee, guardian, executor, or administrator; *and in no case shall property so held under either of these trusts be assessed against any other person.*" It would seem, therefore, that property in the nature of negotiable instruments can be readily concealed from assessment within the State by transfer to a friend as trustee; and be wholly placed by statute beyond the power of the State for taxation, in case the trustee, by reason of his residence, is subject to another and independent sovereignty.

Eighth. Situs of Ships for the purpose of Local Taxation.

The practice in New York at present, and in the New England States, is to value and assess ships as personal property, to the owner at the place of his residence. The Court of Appeals of the State of New York

in the case of *Hoyt* v. *Commissioners of Taxes of New York* (23 N. Y., 240), before referred to, however, expressed the opinion that ships at sea have no *situs* other than the port at which they are registered, and are justly taxable to the owner at such places of registry only. The laws of the United States also provide that no bill of sale, mortgage or conveyance of a vessel shall be valid unless recorded at the port where the ship is registered or enrolled. In the case of *The City of New Albany* v. *Meeken* (3 Indiana, page 481), this question has been made the direct subject of a legal decision. The defendant was a resident of New Albany, Indiana, and was assessed for personal property in respect to a steamboat enrolled at Louisville, Kentucky, and which touched only occasionally at New Albany. It was held that the tax was illegal, the supreme court of Indiana observing "that the only question we have to consider is whether the boat or the defendant's share is within the city." In the case of *Hays* v. *The Pacific Mail Steamship Company* (17 Howard, 713), in which the company resisted taxation on their vessels by the city of San Francisco, the supreme court of the United States decided the taxation illegal, on the following grounds: The provisions of the acts of Congress, 31st December, 1792, and 29th July, 1850, "very clearly indicate that the domicile of a vessel that requires to be registered, if we may so speak, or home port, is the port at which she is registered, and where (in the case in question) it is admitted the capital invested is subject to State, county and other local taxes. We are satisfied that the State of California had no jurisdiction over these vessels. They were there but temporarily, with their *situs* at the home port, where the vessels belonged and where the owners were liable to be taxed for the capital invested."

It is also an interesting circumstance that this legal controversy concerning the *situs* of a ship for the purpose of taxation has its almost exact counterpart in the records of English law; case after case having formerly come up before the English courts in which the question involved was: Shall the ship or her owners be taxed at the place of the vessel's registry, or at the domicile of her proprietors? The ultimate decision was, that the only *situs* of a vessel for taxation is the port of her registry, and this decision was recognized in practice until Parliament and the people arrived at the conclusion that it was for the interest of the nation that ships should no longer be taxed directly in any manner.

General Considerations Pertinent to the Subject.

In calling attention to the above facts, and the opinions and decisions of the various courts, the commissioners would not be understood as taking the position that such facts and decisions are necessarily and in all respects conclusive as to the limitations of the power of States in respect to subjecting certain descriptions of property to local taxation; but they do claim to have abundantly proved that some of the powers now claimed and exercised by New York, in common with other States, are doubtful as respects equity and legality, and that in framing a new tax system, designed to be permanent, it will not do to assume that ancient or common usage is always synonymous with "present right."

The sovereignty of a State in respect to taxation is thus defined in its fullest extent by one judge of a United States court (Ingersoll, J.), in the following language: "The taxing power of a State is one of its attributes of sovereignty, and where there has been no compact with the federal government or session of jurisdiction for the purposes specified in the Constitution, this power reaches all the property and business within the State." But the limitation on such sovereignty is also implied in the language of another United States judge of more extended reputation (Story, Conflict of laws, § 550), who says: "A nation within whose territory any personal property is actually situated, has *entire* dominion over it while therein, in point of sovereignty and jurisdiction, as it has over immovable property situated there." If then the sovereignty of Pennsylvania in respect to mortgage bonds issued by corporations of its own creation is complete, which sovereignty the courts of Pennsylvania have claimed to its fullest extent, in *Maltby* v. *Reading R. R. Co.*, and the supreme court of the United States have also indirectly affirmed. (*Northern R. R. Co.* v. *Jackson*, 7 Wallace, 262), it is difficult to see what sovereignty there is or can be in New York or any other State over the same property for the purpose of taxation.

Relation of the Distribution of Property to Taxation.

But apart from the question of sovereignty, there is another view to be taken of this subject. A State is not only bound morally to do what is right, and to refrain from acts of doubtful equity because possessed of power, but it is in the highest degree expedient, especially in the case of States situated like New York and Massachusetts, that they should not in any degree act inequitably. In all the older and more densely populated States of the Union, wealth obeying the

law, recognized heretofore in all ages and in all countries, is rapidly passing from the hands of the many into the possession of the few; and with a degree of rapidity which we believe the public have not fully recognized; while in opposition to the experience of all other ages and countries, the sovereignty over property by the State vests, and will always remain vested though universal suffrage, never before existing in the hands of the many who have little or no property rather than in the few who possess it. When Massachusetts, therefore, assumes in virtue of State sovereignty to tax her own citizens for property "without the commonwealth," and beyond her jurisdiction, is she not establishing a precedent in the violation of justice and equity which at no distant day may be imitated in other ways by her voting population, forty-two per cent of whom already have no taxable property, and therefore no immediate interest in the protection of property?*

Ninth. Exemption of Property from Taxation through Extra-legal or Adventitious Circumstances.

It may be taken as an axiom in political and social science, that in every free country, where no restraint is imposed on the movement of individuals, and where no inquisition of the person or of the domicile is tolerated, except upon accusation of crime and legal warrant, no law, however just, can be fully and permanently executed, which is in opposition to any considerable public sentiment, or which in itself contains extraordinary inducements for its violation. And especially is this the case with laws imposing taxes, in respect to which the general public sentiment is always in a degree instinctively in antagonism with the State. Of examples in support of this position, the inability of the government to collect a tax of two dollars per gallon on distilled spirits may be cited; and upon no other principle than a general dislike to the inquisition and exposure involved in the execution of the law, can we explain the present almost universal sentiment of the country in favor of the abolition of the income tax; which, out of a population of thirty-nine million, has never been assessed on as many as five

* By report of the secretary of the State of Massachusetts, February 11, 1870, the whole number of legal voters in that State was returned at 262,120, of whom 111,632 (or forty-two per cent) paid only a poll tax; the same having no taxable property beyond what was exempted from taxation by law. The exemptions from taxation by the statutes of Massachusetts are household furniture, not in excess of $1,000 in value; tools and implements of trade of a value not exceeding $300; and the property of unmarried women to the extent of $500, when the whole real and personal estate of such persons is not valued in excess of $1,000. Also cattle and horses less than a year old.

hundred thousand individuals, belonging exclusively to the wealthier and most prosperous classes.

The investigations of the commissioners have furnished many other examples of this limitation of the power of the State in respect to taxation, through what may be called the instinctive resistance of individuals, and for which resistance, as before intimated, there are no practical remedies, without such a personal inquisition and restraint, as is incompatible with a free government. Some of the most curious of these may be mentioned: Thus in Pennsylvania, the State imposes an annual tax of one dollar upon watches of gold; seventy-five cents upon watches of silver, and fifty cents upon those of other material; but how completely the law fails in its execution is shown by the fact, that in Philadelphia, out of a population of 657,000, and an individual assessment of 161,000, the assessors for 1869–70 could find but 12,871 watches; 11,939 gold, 903 silver, and 49 of other material, the last yielding a revenue of $24.50. And yet this ridiculous assessment continues to be kept up as a part of an enlightened system of taxation.

The amount of property which escapes taxation in all or in degree through a change of residence of the owner, and which the law is powerless to prevent, is also very considerable. The testimony of nearly all of our recent diplomatic officers and consuls has been to the effect, that during the last five years Europe has swarmed with Americans, whose object in expatriation has been in great part a desire to escape the payment of the income and other taxes; and in 1868 a memorial was addressed to the Treasury Department from a consular office in Europe, asking that he might be authorized to act as an internal revenue officer to collect the income tax from Americans residing in his district; and representing that an amount of revenue greater than that derived from this tax in many of the prosperous States of the Union might, without difficulty be collected.

During the past year the city of Boston, while increasing the number of her taxable polls by 2,684, experienced a decrease in the valuation of her personal property to the extent of $6,452,900; a good part of which was undoubtedly due to a change of residence on the part of her wealthy citizens in order to escape taxation. Where those who leave the city of Boston to escape taxation found a residence in part, is clearly indicated by the comparative returns of the valuation of personal property in the town of Nahant; a place which, as well known, is by nature almost incapable of producing anything, and

which has no manufactories. In 1865 the total official valuation of the personal property of Nahant was $12,710; in 1867 it had increased to $274,167; in 1869 to $1,982,088, and in 1870 to $4,160,103. The rate of tax in this town, for all purposes, during the year 1869 was less than the half of one per centum. The following story told of a wealthy citizen of Boston is given by the commissioners, not as true, for they have the assurance of the assessors of Boston, that it is not so in the main; but as illustrating, whether true or false, and better than any argument, the facilities that are always open to an individual for evading taxation on his incorporeal, intangible, personal property, in case he has a determination so to do. The individual is reputed as having notified the assessors that in case his taxes—some $30,000—were increased, that he would leave Boston and take up his residence in the town of his nativity, an interior country place of spare population and little property. The assessors paying no attention to the notification, the gentleman put his threat into execution, and on changing his residence, is said to have notified the little town authorities that if they would inform him of the total annual liabilities of the town for taxes, he would alone furnish the money for their payment; an act which he could well afford to do, inasmuch as the aggregate taxes of the town were not quite equal to one-half of the sum at which he had been assessed as a citizen of Boston. Massachusetts has endeavored to remedy this state of things by providing that when a person changes his domicile, he shall not, until making a sworn exhibit, be taxed on any less amount of personal property than he was last assessed for in the place of former residence; but it is evident that such a provision can be only imperfectly effective.

In one of the cities of New York the assessors frankly informed the commissioners that they had tried the plan of assessing wealthy citizens at an approximately full valuation for personal property, and finding the result uniformly one of detriment to the city had desisted, and now taxed such persons for a uniform moderate amount without regard to any valuation. Experience had shown that a tax on full valuation was never paid by such citizens but once, or before a new assessment they had sold their property and changed their residence to some other State or town, where the valuation or rate was different. One instance in particular was referred to, where an assessment was recently made for $4,000,000 personal property. The individual in question swore down the valua-

tion to $1,000,000, paid taxes on that to the extent of four per cent, and left the county.

Another expedient for evading taxes on personal property brought to the notice of the commissioners is worthy of notice for its ingenuity. A firm engaged in manufacturing, with a capital of between two and three hundred thousand dollars, found the rate of taxation to which the same was subjected too onerous and too destructive of profit to be endured. The establishment was therefore closed up and sold out under a legal process; and bought in by the original owners and reorganized with a nominal capital of fifty thousand dollars, on which capital it is to-day valued and assessed. The same thing in principle is reported of many other firms and corporations, who, with the extension of their business and an increase in its value, never increase their original nominal capital, and return such only as the basis of assessment, while their true capital as represented by assets and good will is really ratable at a much larger figure.

General Deductions.

The lesson of all of these examples is, that if we are to have an effective and equitable system of taxation, the State must not attempt to tax property which from its very nature is intangible, incorporeal, beyond control; and whose *situs* is a matter about which the laws conflict rather than agree.

The facts and statements submitted also make clear that of the personal property of the State of New York, the following descriptions or classes are already exempt from taxation or beyond the jurisdiction of the State for such purposes: 1. Imported goods, in original packages. 2. Bonds, notes, and securities of the United States. 3. Visible personal property of citizens of the State located without the State. 4. Property brought within the territory of the State for sale. 5. Deposits in savings banks. 6. Personal property represented by indebtedness; custom and the temptation for evading taxation, including under the head *constructive* as well as *actual* indebtedness. 7. Personal property of citizens of the State in the hands of trustees residing without the territory and sovereignty of the State.

Of property whose taxation by the State involves the exercise of doubtful powers, we have: 1. Mortgage bonds, or evidences of indebtedness created by different States or corporations of such State, and over which another State sovereignty is claimed and exercised. 2. Negotiable instruments, the property of citizens of

New York having an actual *situs* without the State. 3. Ships belonging to citizens of the State, but registered without the State.

If to this enumeration we add mortgages of real estate, the exemption of which from taxation it would seem that self-interest and the legislation of other States would at no distant day render imperative, there is little else left available of the personal property of the State for taxation, except banking capital, railroad and other transportation companies' stocks, household furniture, and the capital and machinery of manufacturers, firms or corporations, the taxation of which last generally if it can be avoided, is always impolitic, inasmuch as such taxation always and immediately enhances the cost of production, and falls directly upon consumers, who are often of a class that are least able to bear it. And this practically, furthermore, is what the present New York State system of taxing personal property imperfectly amounts to. We say *imperfectly*, for the present valuation of all the personal property in the State for taxation is undoubtedly less than a fair valuation of the capital of its banks, railroads, and other corporations, by from two to three hundred millions.

Proposed New System of Taxation.

But the Legislature and people of the State, after considering the analysis and review of the different existing systems of taxation as presented by the commissioners, may naturally respond as follows:

"We acknowledge the imperfections of the existing system. But what other can be proposed which will not prove equally open to objection? The State and its local governments must have revenue; their financial necessities are in no condition to warrant uncertain experiments; and the theoretical basis of the existing system, that every citizen ought to contribute to the necessities of the State in proportion to his ability, is just, and ought to be recognized. Can anything better be done than to amend here and there the present laws and provide for their more efficient administration?" The commissioners in reply would answer, that they are unqualifiedly of the opinion that some better system than the present one can be devised; and as the result of much investigation would submit the following for consideration:

First.—Provide for the Taxation of all Corporations Created by the State which are in the Nature of a Monopoly. Of such corporations the gas company is the type. It has practically no competitor in the town, city, or district in which it is located; and the amount of capital involved, the pre-occupation of the streets and the

certainty of disastrous competition, opposes the establishment of rival companies. Under such circumstances, whatever taxation is imposed on such companies is transferred to the consumer, increasing thereby, to some extent, the cost of living and of production, but in a more limited degree and with less of burden than almost any other taxes that can be mentioned, except those upon pure luxuries. Other corporations which approximate in character to the gas company, would be the national banks (which may be taxed under the present provision of the United States law through their stockholders), the State banks, railroad corporations—steam and horse—omnibuses, ferries and bridges.

Manufacturing firms and corporations, on the other hand, not being local State monopolies in any sense, save in the exceptional case of the manufacture of certain patented articles, would not be included under this section for taxation. Private bankers doing business in competition with national and State banks, should be taxed in the same manner, which may be done without evasion by means of a tax in the nature of a license. The surplus of savings banks is also a legitimate subject for State taxation. Fire, marine, and life insurance companies, and trust companies can, in the opinion of the commissioners, be taxed moderately and without detriment by a tax on their franchise proportioned to their capital and business.

The commissioners believe that on a true valuation of the property, included under the above enumerated items, a revenue might be derived, at a fair rate of taxation, nearly or quite equal to that now obtained from the taxes levied on the present valuation of all the personal property of the State; and, furthermore, that with an efficient centralized supervision of this department of public administration, such a valuation and revenue are perfectly practicable.

The present system of taxing railroad property in the State of New York is as imperfect and objectionable as it well can be. The road bed and the real estate of the companies are valued and assessed in the different towns through which the line of the road extends, according to no uniform standard, but at the discretion, or rather caprice, of the local assessors, from whose decisions there is, practically, no appeal. In some towns the standard of the valuation and taxation of the corporation property is reported to depend on the amount annually required to defray the highway expenditures; and in another recent instance the erection of an expensive bridge over a navigable stream was regarded by one of the towns, on whose terri-

tory the bridge abuts, as a sufficient warrant for the erection of a new school-house. In one town, where a company had substituted an expensive and commodious station-house for one dilapidated and inconvenient, to the great benefit of the town and the convenience of its citizens, the erection of the building was immediately made the occasion of a large increase in the taxation to which the company was subjected. The effect of this was, to use the language of our informant, "that we have concluded not to repeat, for the present, the building of any more expensive station-houses along the line of our road, but will get along with the cheapest buildings possible;" or, in other words, the action of one town, in respect to taxation, was made to result in detriment to all the other towns on the line of the road, whose need for elegant and improved station-houses might be equally or more imperative. On the other hand, it is alleged that the railroad companies often endeavor to protect themselves from what they conceive to be injustice, by threat of retaliatory measures, or by actually putting such measures into execution, as in the case of the rebuilding of station-houses mentioned; and, furthermore, that the companies, after all, do not pay in the aggregate in the way of *direct* taxes as much as would be equivalent to the average rate imposed throughout the State on similar corporate property, as banks, gas companies and manufacturing corporations; rolling stock in their valuations, being classed as real estate, while the funded and floating debt is made to offset and neutralize as indebtedness all valuations and assessments against the companies for personal property. During the year 1869, the aggregate taxation paid by the steam railroad corporations of the State on real estate, amounted, according to the report of the State Engineer, to $1,565,670.52. The capital stock of the roads of the State, paid in, and the aggregate of their funded and floating debts for the same year, was $276,591,433. It thus appears that the amount paid by the roads for taxes on their real estate (and no other taxes are returned), is but little more than a half of one per cent on what in Massachusetts, Connecticut and Ohio, would be considered a fair taxable valuation of their property. If the same property had paid the average rate of taxation throughout the entire State for that year (2.48 on the dollar), the aggregate would have amounted to $6,859,467.75.

And here it is appropriate to call attention to another of these anomalies in American taxation which seems almost unavoidably to lead to the conclusion, that one of the avowed objects of those who have heretofore framed the tax laws of the country, has been to create

as much of confusion, inconsistency and irregularity in the subject matter as circumstances would render possible. In New York as has been stated, the real estate of railroads, including the road bed is taxed by the several towns and wards of cities through which the line of the road extends. The supreme court of Massachusetts however, which has had the question before it in at least three different forms, has uniformly decided that land taken or purchased by railroad corporations for their tracks, not exceeding five rods in width;* and land purchased in fee, or otherwise taken by a town or city, by authority of the Legislature, for strictly public purposes is taken in the exercise of the right of eminent domain, and is therefore not liable to local taxation. In the case of *The Inhabitants of the City of Worcester* v. *The Western Railroad Corporation of Massachusetts*, the supreme court (Shaw, C. J., 4 Metcalf, 564) held, that the taxation by the town of the road-bed of the railroad lying within its territory was illegal, on the ground that the road was a public work "established by public authority, intended for the public use and benefit, the use of which is secured to the whole community, and constitutes, therefore, like a canal, turnpike, or highway, a public easement." "The only principle," continued the court, "on which the Legislature could have authorized the taking of private property for its construction, without the owner's consent, is, that it was for the public use. It is true that the real and personal property, necessary to the establishment and management of the railroad, is vested in the corporation; but it is in trust for the public. The company have not the general power of disposal incident to the absolute right of property; they are obliged to use it in a particular manner and for the accomplishment of a well defined public object; and they are required to render frequent accounts of their management of the property to the agents of the public. Treating the railroad, then, as a public easement, the works erected by the corporation as public works intended for public use, we consider it well established, that to some extent at least, the works necessarily incident to such public easement are public works, and as such exempted from taxation. Such, we believe, has been the uniform practice in regard to highways and their incidents; and also in regard to public buildings, as State houses, forts, arsenals, court-houses, jails, town-houses, school-houses; and generally to houses appropriated specially to public use."

* In Massachusetts, the amount of land authorized to be taken by railroads for track purposes has been *five* rods in width. In New York, the general railroad law (April 2, 1850) authorizes railroads to take six rods for their roadway, and "as much more land as may be necessary for the proper construction and security of the road."

It is scarcely necessary to remark, in referring to this decision, that it is for the Legislature of a State to determine, in the first instance, what may be regarded as a public use; but in New York the laws defining what property by reason of its public use shall be exempt from taxation are almost the same as those of Massachusetts; embracing all property of the State, public highways and canals, turnpike and plankroads under certain circumstances; houses of worship, school-houses, jails, court-houses, public libraries, lands of agricultural societies, etc.

Massachusetts, therefore, in conformity with the above decision of her courts, exempts the road beds of her railways and the structures thereon, from all local taxation, and taking the whole subject of railroad valuation and assessment into her exclusive control as a State, taxes, as already shown, at the average rate of the State, the corporate franchise at a valuation equal to the aggregate value of the shares of the capital stock, less the value of such real estate as is owned by the corporation and not exempt from local taxation.

Connecticut adopts, also, a similar plan, and imposes a tax of *one per cent* on an aggregate made up of a market valuation of the shares of the roads, and of their funded and floating debt, less cash on hand; this last provision being regarded as offsetting all that portion of the floating debt not likely to be rendered permanent. In both Massachusetts and Connecticut, the stocks, bonds, and other personal property of the railroad corporations are exempted from any further liability to make returns and pay taxes within the State. Massachusetts apportions the railroad taxes received among the towns of the State where the stockholders reside, paying directly into the treasury those of non-residents. Connecticut appropriates to State purposes the whole amount of taxes thus received.

The commissioners are of opinion that the interests of New York would be subserved if the State should follow the example of Massachusetts and Connecticut, and take the taxation of her railroad coporations exclusively under her control; authorizing the Comptroller, or other designated officer, to assess annually, at a given rate, the corporate franchise, at a valuation equal to the aggregate market value of its stocks and funded and floating debt, less cash on hand; and that in consideration therefor, the said corporations be exempt from all other taxation. The taxes so received could be credited on account of State taxes, or paid direct to the several towns and cities through which the line of the road passes, in proportion to an equalized valuation of the property of the corporation within the separate territorial

limits; or be passed, without reserve, to the State treasury, and use in defraying State expenditures. As the corporate franchise of ever railroad has been granted in the name and by the authority of *all* th people of the State, and as every town or city through which a lin of road runs has had the valuation of its property, and the trad and convenience of its citizens increased by reason of the road's co struction, the latter method of disposing of the revenue derived fro taxing railroads, would seem to be the fairest and most equitable.

Second. The second provision of the plan of taxation recom mended by the commissioners would be, *to tax land exclusive o buildings at a uniform valuation of fifty per centum of its tru marketable or fair value.*

It is obviously immaterial, so far as equity is concerned, wha standard of valuation is adopted for any given class of property provided that the standard be uniform; but the reasons for recom mending *fifty per centum*, or some valuation less than a full one, ar connected with the next and third provision of the proposed systen of the commissioners.

Third. In what has preceded, the commissioners claim that the have demonstrated the inconsistency, inexpediency and unconstitu tionality or illegality of many of the existing laws imposing taxe *directly* on personal property; and also the uniform failure of th system as a whole, wherever it has been adopted. The answe generally made, however, to any proposition to do away, as all othe nations have done, with such a system, is, that it is right that al persons and all property should bear a proportionate burden of th necessities of the State; and that although all that the commissioner have alleged may be true, yet a considerable amount of taxes ar collected under any circumstances from personal property; and tha to the extent to which they are collected, the burden is proportion ally lightened on real estate. The problem presented for solution, therefore, is: Can the present imperfect system be done away with and personal property at the same time be made to sustain its equitable and proportionate share of the public burdens?

To this the commissioners reply unqualifiedly in the affirmative, and for the following reasons:

Every person possessed of personal property, unless he convert such property into money and refrains from all use of it, affords some sign or index of its possession.

In England, France, Belgium and Holland (in all of which coun- tries, at the commencement of the seventeenth century, the same

system of indiscriminate and universal taxation for local purposes now existing in the United States, prevailed in a greater or less degree), experience, gained through years of practice, and assisted by a despotic administration, has led to the conclusion that the rental value of houses or other occupied buildings is the most certain index of the value of the personal estate of the owners or occupiers, and is also the best measure of an individual's income and ability to pay taxes that can be adopted.*

The commissioners, convinced by their investigations that the experience of the countries old in civilization, before mentioned, is a true and legitimate experience, and that the rule and practice which have resulted from it are equally applicable to the condition of affairs in the State of New York, would accordingly propose as the *third* provision of their new system, one of the two following plans for equitably taxing personal property, or for obtaining a more than substantial equivalent for the taxation now imposed on such property:

1. *Tax the house or building as real estate separately, at the same rate of valuation as the land, that is, fifty per cent; and then assuming that the value of the house or building, irrespective of its contents, be such contents furniture, machinery or any other chattels whatsoever, is the sign or index which the owner or occupier puts out of his personal property, tax the house or building on a valuation of fifty per cent additional to its real estate valuation, as the representative valuation of such personal property*; or in other words, tax the land separately on fifty per cent of its fair marketable valuation, and tax the building apart from the land, as representing the owner's personal property, on a *full* valuation, as indicated by the rent actually paid for it or its estimated rental value.

Or, as a substitute for the above third provision the following:

2. *Tax buildings conjointly with land as real estate at a uniform valuation; and then as the equivalent for all taxation on personal property, tax the occupier, be he owner or tenant of any building or portion of any building used as a dwelling, or for any other purpose, on a valuation of three times the rental or rental value of the premises*

*It is also an interesting fact, and appropriate for notice in this connection, that the discontinuance of the direct taxation of personal property in Great Britain, was not in the outset the result of any specific legislative action, but that it came about gradually, through decisions of the courts, which one after another (as the courts of the United States, as already shown, are now doing) exempted certain classes of property from liability to taxation, national or local. One of the earliest and most important of these decisions was rendered by Lord Mansfield, denying the right to tax directly, as personal property, investments in the public funds (consols), a decision which was followed by others, until the list of personal property subject to taxation was so limited that further assessments upon all property of this character was suspended by Parliament; a suspension even now periodically renewed, as the period of limitation previously fixed by law terminates.

occupied. Tenement houses occupied by more than one family, tenement houses having a rental value not in excess of a fixed sum, be taxed to the owner as occupier.

All property not embraced under one of the three provisions above stated to be entirely exempt from all taxation.

In Great Britain and France, where this latter system in some its features prevails, the tenant is made responsible for all arears taxes on the premises occupied. The consequence is, that no pers will buy or lease a building until they have received a warranty th it is free from all tax encumbrances; and owners and landlords therel become in a measure tax collectors.

To recognize clearly the principle on which these two latter pr visions are founded, it is necessary to recur back to the propositi laid down and demonstrated in the previous part of this report, viz

That the market value of real estate is always proportional t and dependent on, the amount of personal property, or rather produ tive capital, placed upon it, or in its immediate vicinity. Land itself has originally no value, as it cost nothing to any man to pr duce it. If there is no personal property or productive capital co nected with it, or reflected on it, it will not sell in the market, or only a nominal value. If by chance any buildings should be co nected with such land they will possess no rental value. Only personal property, or productive capital is brought in connecti with real estate does its value become appreciable and augment.

Applying, practically, to New York the proposed system for ta ing personal property through buildings or rentals as its represent tive, we should find that the aggregate of taxation would be t lowest in the most sparsely settled agricultural districts of the Stat Property here is mainly in land, whose low marketable valuati would be still further reduced on the tax list, if a valuation of fif per cent was taken as the standard for assessment. The marketab value of the buildings is small also; and what should be especial borne in mind is this circumstance, that here, and in fact all the agricultural districts, *the value of the buildings is general much less than the value of this land with which they are connecte* As we leave the sparsely settled agricultural districts, and ri through the more densely populated portions of the State from th villages to the towns, from the towns to the cities, and from th cities to the great metropolis of the continent, we shall find that th value of land, of buildings, and the aggregate of taxable valuati will increase, as the amount and accumulation of personal proper

ncreases, until land and buildings attain their greatest market and ax valuation in Wall street, Broadway, and Fifth avenue, where he accumulation of personal property is the greatest. It is also to e observed, that starting at the bottom of our scale, with the value f land greatly in excess of the value of the buildings connected ith the land, that this difference, as we progress upward through ne more densely populated districts, gradually diminishes, until as the case very frequently in the cities, *the value of the building reatly exeeeds the value of the land in which it is situated.*

And yet, while under the proposed system, the agricultural districts ould, as now, pay the smallest proportion of the aggregate taxes, nd the towns and cities as now also the largest, there would be no injustice, but, on the contrary, one uniform equitable rule of valuation nd assessment.

The sum of *three times* the rent or rental value is taken as the asis of the valuation of personal property, in the second proposition, n the assumption that this is the minimum rate that exists between ne rent paid or rental value of the building occupied and the other vailable means or income of the tenant or owner. The assumption , however, to some extent arbitrary, and can be increased or diminhed as circumstances or the necessities of the State may seem to arrant.

Consideration of Objections.

Some objections to the proposed system may be anticipated. It ay be urged that the assessing of buildings at their cost or full sh value, or their occupiers on their rental, "would be in effect ffering a premium for tame architecture and cheap structures of all inds, and prescribing a penalty for expending money in costly uildings and ornamental architecture." To this it may be replied, at so long as the demand and scarcity of active capital continue so xceptional as at present in this country, any tendency to check xtravagance in its expenditure, or its unproductive investment, is not be regretted. But that the proposed system of taxation is likely to xert any such effect in a marked degree, the commissioners do not elieve; inasmuch as there is nothing in which wealth so instinctively eks to display itself as in ornamentation, both of person and estate. nd the more expensive the ornamentation the more it seems to be esired. The possessor of wealth generally does not deny himself the uxuries and comforts that wealth brings—expensive furniture, works f art, conveniences of living—but to put these into a cheap house or

building would be similar to putting a patch of new cloth upon an old garment.

Again, "personal property," as has been remarked, "is something more than a piece of paper; and in its value and essence must be something which has its origin in positive value. Accepting this principle., how can personal property be housed or guarded anywhere except upon real estate,* buildings or land? The more valuable the property to be thus housed and guarded, the more valuable the rental value, and the greater the proportion of taxation to which it is subjected. Establishments that sell high priced articles of luxury, jewelry, plate, costly furniture or fabrics, cannot be located in cheap and obscure places, but must necessarily seek the most conspicuous and expensive locations; and, paying the highest rentals, will necessarily pay the highest taxes."

The case of an individual may be also referred to, who has no lands or buildings, but large personal property; and who lives, perchance, in a hotel, boarding-house, or some cheap apartment. Would you exempt, it may be asked, such a person from all direct taxation? As the case thus supposed, and under varying circumstances, is an important one from its bearing on the principle of taxation involved in this discussion, it is proposed to examine it somewhat in detail.

If the property of the individual is invested in those great repositories of personal property, banks and railroads, within the State, or in gas companies, such property would be taxed in full under the first provision of the proposed system. If they are invested without the State in a similar manner, they would be taxed under another sovereignty; and to tax them again in New York would be double taxation, the unconstitutionality of which the United States supreme court has affirmed, and the inequity of which no one will deny.

If the property is invested in United States bonds, or other securities exempt by law from assessment, the individual would escape direct taxation in New York, under the new system, as he does now under the existing system; and as he would under any circumstances, unless it be a tax levied directly upon income. But he could not escape indirect taxation. The idea that owners or occupiers of land or buildings pay exclusively the taxes upon such property is a fallacy long ago exploded. If an individual occupies a building simply for the purpose of living, and derives his support from the income of invested property, he will undoubtedly find it very difficult to transfer

*Hon. S. Townsend, debates, New York Constitutional Convention, 1867-8, p. 1980.

the taxes assessed upon such real estate to any other person. But if the land and building are occupied for business purposes, as for a farm, factory, store, or hotel, the rent and taxes become a part and parcel of the expenses of such business, and are paid wholly by the purchasers or consumers. That this must be so is evident, if we consider that the moment real estate becomes a tax to the owner, over and above what he realizes from it, be it pleasure or profit, that moment it loses its value, and the owner or lessee will, if he can do no better, abandon it. In short, every individual, no matter where or how his property is invested, who lives anywhere within the State, or purchases from its citizens any article or service, would pay, under the proposed system, more perfectly than under any other, a proportionate share of the expenses which the body politic requires for its maintenance and administration.

But suppose the individual to hold his property exclusively in money or negotiable instruments, promissory notes, mortgages, etc., and occupying premises at a low rental, subsists upon the merest pittance; is his property to be exempt from direct taxation?

The answer to this is, *first*, that there are few such persons comparatively; and, *second*, that if an individual is determined to escape *direct* taxation, it is perfectly within his power to do so. He may, for example, invest in United States bonds; in real estate mortgages as a resident of Pennsylvania and New Jersey, which are free from taxation; or in Connecticut, where the mortgagee may by law add the taxes to the rate of interest; or in ground rents, a recognized principle of which often is, that all taxes on the property shall be paid by the occupier.

But assuming, even, that the State could at once lay hold of and assess directly a money property; it admits of complete demonstration that the owner would fully compensate himself for all taxes that may be taken from him. There is to-day a law upon the statute book of New York against usury, or taking, directly or indirectly, more than the lawful rate of interest; more stringent and barbarous than is to be found in any other State or country. There is another law of the State which imperatively requires that all money loaned at interest, shall be assessed to the owner at the local rate at the place of his residence. The commission have now a right to assume that as the Legislature refuses to repeal or change these laws, that they are obeyed; else the State authority is defied and the law brought into contempt.

But if these laws are obeyed and enforced, what, may be asked, is

the rate of interest in the principal centers of business to-day in th State of New York? Manifestly, the legal rate of seven per cent less the local rate of taxation on the money loaned. Now the loca rate of taxation for the current year in the cities of New York, Brook lyn and Albany, being respectively 2.27, 3.87 and 4.57, it follows tha the return for money loaned in each of these cities should be als respectively 4.73, 3.13 and 2.43 per cent; and in the city of Roches ter, where the present local rate is 6.70, the profit of the lender c capital should be only three-tenths of one per cent. The commissior ers would respectfully ask if any person is known who in the Stat of New York lends money at any such compensation; and if ther are none such, then one of two things is certain: either the State co lects no taxes on money loaned at interest, or the taxes are wholly pai by the borrower. If the State collects no taxes of the lender, the laws are allowed to remain on the statute book which have practicall no meaning. If they are paid by the borrower, then the State taxe heavily a class of persons whom it is most injudicious to tax, in suc manner; the men who are doing most to develop the resources of th State, and increase its wealth, production and commerce. In shor money will always command its net value in every market, and th imposition of taxes merely increases the charge made for its use. I was so in the middle ages, when the Jews were the chief capitalist and the thumb-screw and the rack instruments of assessment. It i so to-day, all legislation to the contrary notwithstanding.

Again let us consider how the proposed system of taxation wi affect persons of small means, who, by long long continued effort an saving, have obtained a homestead, but, through inability to con pletely pay for the same, have given a mortgage upon the premise As the case now stands, they are liable to taxation under the existir law on its full valuation of their real estate, and also on their furn ture and other personal property. The mortgage on the property also subject to taxation, which, as before demonstrated, is also, eith directly or indirectly, paid by the borrower or mortgagor. An here it is to be remembered that the present system already pract cally imposes the bulk of the taxes on real estate, and that, under th recent legal decisions, the amount of personal property that can l directly made subject to taxation will every year become proportion bly less.

Let us suppose the property in question to be located in Brookly Troy, Albany or Rochester, in all of which cities the present rate taxation is in excess of four per cent. If the assessment is made on

full valuation of $4,000, the annual taxation at four per cent would be $160; and if on a valuation of fifty per cent (which valuation must soon be exceeded, if personal property is to continue to evade its liabilities), eighty dollars.

Under the proposed system of the commissioners, the rate cannot be in excess of *two* per cent, and will probable be much less. *Two* per cent on a fifty per cent valuation of the land, supposing the value of the property to be equally divided between the land and the building, would be twenty dollars ($1,000 × 2 p. c.=$20). Two per cent on a full valuation of the dwelling ($2,000 × 2 p. c.=$40) would be forty dollars; total, sixty dollars annual taxation. Or, according to the basis of the second proposition of the commissioners, in which *three times* the rent or rental value of the premises is taken as the representation of the personal property, the taxation would be as follows: *Two* per cent on a *fifty per cent* real estate valuation of the whole property would be $40 ($4,000÷2=$2,000 × 2 p. c.=$40). Assume then the rental to be equivalent to ten per cent on the full value of the property, or $400; *three times* this would be $1,200, on which the taxation at two per cent would be twenty-four dollars; making the total taxation sixty-four dollars, as compared with sixty dollars according to the basis of the first proposition; and eighty dollars according to a fifty per cent valuation under the existing laws, *plus* the taxes on the mortgage encumbrance, and on all the personal property of the owner. And yet, while every real estate owner in the State will, under the proposed system, equitably pay less than now on his real estate, the valuation of the State, through a real and unavoidable inclusion of its personal property, will be very greatly increased.

We come next to the consideration of the question, of the manner in which the valuation of property, and the rate and apportionment of taxes will be affected under the proposed system. Under the conditions of the first proposition, that land and buildings should be taxed on a valuation of *fifty per cent*, and that an additional *fifty* per centum should be added on buildings to represent personal property, the result would be approximately as follows:

It is certain that the average valuation of land and buildings, real estate, throughout the State, is not now in excess of fifty per centum of their fair marketable value. The probabilities are, furthermore, that the average is considerable less than this proportion. Under the new system, therefore, the valuation of real estate would be no less than it is at present (1869), viz., $1,532,720,907. To aid in the for-

mation of an opinion as to what would be the valuation of the personal property subject to assessment, on the assumption that the personal property of the State is justly represented by *fifty* per cent of the fair value of its buildings, irrespective of their contents, or of the land upon which they are situated, we have a variety of data.

If we assume that half of the present valuation of real estate is represented by the value of the buildings, and according to the existing practice of appraising land and buildings, such an assumption is not probably far from the truth, then the personal property valuation on such basis would be $760,360,000. If we add to this the valuation of the property of corporations, taxed under the first provision of the new system—which, in the two items alone of railroads ($302,692,801) and public banks ($174,833,786), aggregate ($477,556,587)—say $500,000,000—we have a total valuation representing personal property of $1,237,896,587, as compared with a present valuation of $434,270,278.

If we assume the value of the buildings as only one-third of the present real estate valuation, then the total valuation representing personal property would be reduced to $1,110,906,969, as compared with the present valuation of $434,270,278.

According to the census of the State of New York for 1865, the value of the dwellings alone returned was $977,121,378; and in this return 66,114 dwellings were omitted in valuation, as well as all buildings not used for the purpose of dwellings. It should, however, be stated that the value of the dwellings as above returned included the value of the lot of land on which such buildings are built, if in a city or village, but not otherwise. It is, however, altogether probable that the census valuation of dwellings as above given is much below the true value; and that this is the opinion of the superintendent of the census (Dr. Hough), is shown by the following extract of a letter from that gentleman in reference to this subject. He says:

"I have observed that inquiries relative to real estate by census enumerators are regarded with great jealousy by the people generally, and a law intended for complete operation, in all that can properly come within the range of a census, should, in my opinion, leave out such inquiries altogether, or have some provision tending to relieve from suspicion of taxation."

It is interesting also to compare the results of the enumeration of the dwellings in the State by the State census of 1865, and by the United States census of 1870. The first (State census) returned the

whole number at 544,398; the second (U. S. census) returns, in 1870, out of the 876 subdivisions of the State, 678,952, a difference or increase in five years of 134,554. For the year 1869, the whole number of proposed new buildings reported by the superintendent of buildings in New York city was 2,348, of the value of $39,331,088; and for the year 1870, 2,189 new buildings of the value of $31,731,348; or, in other words, the total value of the new buildings proposed to be erected in New York city during the last two years only, and nearly all of which were either commenced or finished, amounts to $71,062,436, or to nearly one-tenth of the assumed fifty per cent valuation of all the buildings of the State as above given.

Again, under the conditions of the second proposition, that three times the rent or rental value of the buildings of the State shall be taken as the valuation and representation of the personal property of its citizens, we have the following data as a basis for estimating the total valuation which may be obtained for taxation:

The estimate given to the commissioners by persons whose judgment is to be relied on, is to the effect, that the present annual rental of the buildings of the compactly built wards of New York city, is considerably in excess of $100,000,000. Three times this amount would be $300,000,000. If we add to this the capital, surplus and undivided profits of the national banks of the city, $104,000,000, and the valuation of gas companies, horse railroads, ferries, omnibus lines, the franchise of insurance and trust companies, private banking capital, and the surplus of savings banks, $100,000,000 (estimate), we have a valuation representing personal property of $504,000,000, as compared with a present personal property valuation of $281,000,000.

But great as would be the gain in valuation here, the gain in other parts of the State would undoubtedly be in much larger proportion. Thus, taking Brooklyn for example, we find the value of the dwellings in that city, according to the census of 1865, returned at $120,000,000; the annual rental of which, at ten per cent (a low rate to cover insurance, repairs and taxes), would be $12,000,000; three times which would be $36,000,000. If we add to this the amount on which the corporations of the city of Brooklyn are assessed for the present year, $7,956,820, we have the total of $43,956,820, as compared with a present valuation of personal property for the whole city of $17,559,980, showing a gain of $25,396,840. And this result, it must be remembered, is predicated on the rentals of dwellings alone, thus making it evident that where the rentals of buildings,

other than dwellings are also included, the valuation will be still further increased. That such a valuation of personal property is even then much less that a true valuation would seem to be demonstrated by the circumstance, that the amount of income in excess of $600, with the rent or rental value of dwellings, and the cost of the annual repairs on the same in addition, on which an income tax was collected in the city of Brooklyn for the year 1868, was in excess of $40,000,000.

It seems evident, therefore, that by the proposed system the valuation of the property of the State of New York can be largely as well as equitably increased, and made without difficulty to approximate to its fair and just basis; thus affording all the revenue that may be needed at an average rate much less than the rate now prevailing. And although the assertion is a truism, it should nevertheless be distinctly borne in mind, that an equable increase in the valuation of the property of the State, especially that known as personal, does not increase the taxes; but, on the contrary, by distributing them fairly, will both decrease the rate and fairly proportion the average.

The following may be also enumerated as other advantages of the proposed system: By making the standard of valuation and assessment, except in the case of the associated capital of certain corporations and the capital of private bankers, that which is *certain*, *visible* and *tangible*, and disregarding that which is *invisible*, *incorporeal* and *intangible*, the incentive and opportunity for fraud, evasion and perjury would all, or in a great degree, be removed; the tax gatherer brought in communication with the smallest number of individuals; all personal inquisition, exposure of property, and necessity for oaths avoided; production of every kind, agricultural, mining and manufacturing, placed upon the most favorable conditions; shipping fostered; trade and commerce left untrammeled; while all the numberless vexatious and difficult questions, which are sure in the future to grow out of the conflict of laws and the sovereignty of States respecting the *situs* of certain descriptions of personal property, would be transferred to such other communities as desire to enjoy them. The proposed plan, furthermore, will not permit the *dishonest* tax-payer (under oath) to arbitrarily assess other persons by the under valuation of his own property, or, on the other hand, compel the *honest* tax-payer to either criminate or over-burden himself; or permit assessors to assess in an arbitrary manner any one, inasmuch as all the proceedings must be according to a uniform law and on the basis of such

testimony as is admissible in any court of law in a country where property can only be taken by well known and established rules of evidence.

The commissioners would also call attention to the circumstances, that by their proposed system, and by that only, can the privilege of exemption from taxation now enjoyed by the owners of United States bonds, through the exercise of federal authority, be practically done away with, viz., by placing such securities upon the same basis as all other property of like character, and stripping their owners of any exclusive privileges. Capital then, finding that an investment in United States bonds, or in a savings bank exempt from taxation, offers no advantage over an investment in a State loan or real estate mortgage, will return to the latter, and thus increase the resources by which the development of the State is effected.

Again, under such a simple and liberal, though at the same time just and inflexible system of taxation as the commissioners propose, New York, instead of comparatively retrograding, as she has done within the last ten years, would be more than ever the Empire State of the Union; and it is the opinion of experts, with whom the commissioners have consulted, that capital and population would be attracted to such an extent from the neighboring States, that the latter would be forced, in self-protection, to place themselves in respect to taxation at once upon a similar basis.

Freedom from multitudinous taxes, espionage and vexations; freedom from needless official inquisition and intrusions; freedom from the hourly provocation of each individual in the State to concealment and falsehoods; freedom for industry, circulation, competition everywhere; give the State these conditions and it will give in return a flowing revenue. Adopt an opposite system, and there will be disappointing revenues, discontent, embarrassment and demoralization everywhere; cheerfulness and prosperity nowhere.

Another advantage which may be claimed for the proposed system of valuing the personal property of an individual for the purposes of taxation according to the indices which he exhibits to the public is, that the individual would thereby see and feel in a consolidated form the proportion of the public burden he is called upon to sustain, and accordingly have his attention more powerfully directed to the manner in which the revenues raised by taxation are disposed of. On the other hand, where taxes are collected by indirection, and are levied upon a multitude of objects, they escape the attention, and leave the citizen in indolent and injurious indifference as to the disposition that

is made of them. A striking illustration of the truth of this proposition is now afforded in the case of the city of Philadelphia, one of the cleanest, most convenient and prosperous cities of the country. Taxation for municipal and county expenditures, as has been before shown, are here assessed almost exclusively upon land and buildings; and yet in no other city in the country are rents so moderate, the buildings so tasteful and the investment in real estate mortgages regarded with more favor. While New York city, with a population of 927,000, in the years 1869 and 1870, built or proposed to build 4,537 buildings; Philadelphia, with a population of 657,000, issued permits for erection within its limits, during the same period, of over 10,000 buildings, a large proportion of which were for dwellings. Notwithstanding this favorable exhibit for Philadelphia, a portion of her local government are agitating the question of abandoning the existing system of taxation, and of adopting a system akin to that now existing in New York and Massachusetts. And for what? Not that the city is not well governed, and in most respects what it should be, but simply that more money may be obtained for greater expenditures. The local legislators know very well that so long as the present system of taxation is maintained, the raising of additional revenues will be resisted and rendered impracticable. But it is hoped that by bringing into the range of assessment the multitudinous objects classed under the head of personal property, that what is now difficult will be made easy. The commissioners are decidedly of the opinion that the citizens of Philadelphia, if they consult their own interests, will avoid taking a step so difficult, when once taken, to be retraced, and which is sure to deprive them of one great element of their present municipal prosperity.

Uniform Regulation of the Rate of Taxation.

A peculiar feature, which has for some time characterized the tax system of France, seems to the commissioners worthy of being incorporated also, in any new system which may be adopted for New York, viz., that of limiting, by legislative authority, the rate according to which taxes may be levied in any one year. The revised statutes of France provide that the *Corps Legislatif* shall annually establish the maximum rate of taxation, above which no real estate shall be taxed. Then the *Corps Legislatif* annually apportions the amount to be raised by the several departments, and limits the rate of taxation which the *conseils generaux* (boards of supervisors) may levy in apportioning the

rate for the expenses of the *cantons* (counties) and also for the municipalities. The *Corps Legislatif* also, in annually levying the direct taxes, gives authority for the levy of a special tax at a small rate, the proceeds of which are to be used exclusively in paying pressing claims on the departments, cantons, or municipalities, in case other resources are not sufficient to meet and discharge such immediate liabilities. A permanent law then defines what shall be considered as "pressing liabilities," viz., the maintenance of the buildings of the "prefecture," the salaries of the judiciary, the interest of debts lawfully contracted, and the judgment of the courts.

A provision of this character, adapted to the circumstances of the State of New York, and embodied in the form of law, will be found in sections 14 and 15 of Outline Code No. 2, given in the appendix to this report marked C. It is also to be noted that the statutes of Pennsylvania already recognize this feature of limiting the taxing power to some extent; the language of the act defining the power of county commissioners reading as follows: "And no tax in any one year shall exceed the rate of one per cent." (Purden's Digest. Laws of Penn., p. 930, sec. 13.)

Disproportionate Taxation.

At present if an individual is assessed on a valuation in excess of the true value of his property, he can obtain relief by personally appearing before the board of assessors and, as it is termed, "swearing down" his valuation. But if he is assessed through error or partiality of the assessors, on a valuation disproportionate to his neighbors and yet not in excess of the true value of his property, there is no mode of obtaining relief now open to him under the existing system. To remedy this defect, and ensure equality, the commissioners have proposed a plan believed to be entirely new in American tax systems, and which in substance is as follows: The individual aggrieved may appear before the assessors or tax commissioners sitting as a board of review; and if he can show by the testimony of creditable witnesses that he has been disproportionately assessed by the undervaluation of the property of his neighbors, the assessors or tax commissioners shall immediately raise the valuation of all such property undervalued to a full and fair valuation, and thus give relief to the aggrieved party by a full, fair and just valuation. In order to the more full understanding of the nature and application of such a provision, reference is made to sec-

tion 13 of Outline Code, No. 2, given in the appendix to this report, marked C.

The commissioners do not, as might have been, perhaps, anticipated, present in connection with this report any *complete* code of law relative to local taxation, and for the seeming omission they submit the following reasons:

When a physician is called upon to treat a patient, his first business, if he understands his business, is, to acquaint himself thoroughly with the nature of the disease, and the habits, constitution, and predispositions of the individual. If prescription of remedies is attempted without such an investigation, the treatment is simply empiricism. Now disease in the body politic, if treated intelligently, must be treated in a manner similar to disease in the body organic. The course of treatment, moreover, involves three points: *First*, to ascertain the facts; *second*, to discuss the remedies; *third*, to apply the remedies. The commissioners claim that they have embraced the first two of these points in this report. Sufficient time has not been afforded to do more. To draft a code of laws, to model the machinery, which shall smoothly and effectually raise by taxation an annual revenue, now exceeding *fifty* millions per annum, is a work not to be done hastily.

But if sufficient time had been afforded, the commissioners do not think that the presentation of the draft of a code of laws would be expedient, until they have received from the Legislature and the people of the State, an expression of opinion as to what measures, in view of the facts presented, will be desirable and prove satisfactory.

Three courses of procedure seem open: *First*, to make a system of laws on the basis recommended by the commissioners; *second*, to endeavor to improve, strengthen and patch up the existing system by various amendments; *third*, to make a system of laws on the basis of endeavoring to assess all property, real and personal, things visible and invisible. For whichever of these plans the Legislature and the people will indicate a preference, the same the commissioners are now ready to put in the form of law to the best of their ability; but to present the draft of a code of laws relative to taxation, which is not in accordance with the wishes of the Legislature or general public sentiment, would be a waste of time, labor and expenditure.

With a view, however, of showing how the provisions of the system recommended by the commissioners can be expressed in the form of law, two outline codes are given in the appendix to this report, marked C; *Outline Code No.* 1 being drawn on the assumption that

fifty per cent of the value of the building is to be taken as the representative basis of personal property; and *Outline Code No.* 2, on the assumption that *three times the rent*, or *rental value*, best constitutes such a representative basis.

If the third plan, *i. e.*, that of taxing all property at one uniform rate, is preferred, the code adapted to the same is ready at hand, in the draft of laws prepared by the commissioners of New Jersey and Connecticut in 1869, and rejected by their respective Legislatures; or a more recent draft, in which the universal and uniform principle is carried out to the fullest extent, namely, that prepared during the past year by the Board for the Equalization of Taxes in the State of Illinois, under the direction of the Legislature of that State. Some idea of the character of this act — the most complete for its purpose, as above stated, undoubtedly ever drafted — may be obtained from the statement that the act forms a pamphlet of forty closely-printed pages, embracing 255 sections; and under the head of personal property requires *thirty-seven* specific returns to be made by each individual tax-payer; each female, among other provisions, being required to submit annually a list (and make oath to the same) of all her jewelry and other personal ornaments of value. As some indication, moreover, of its popularity and acceptance by the people, the commissioners quote the following exhibit of the act as set forth in one of the leading papers of the State, acting in harmony with the dominant political party in the Legislature:

"The board for the equalization of State taxes has prepared and submitted to the Legislature a draft of a law which makes a book of forty pages, closely printed in small type. The bill is "for the assessment of property, and for the levy and collection of taxes." It far exceeds, in rapacity, any of the internal revenue laws passed during the war. Without exception, it is the most objectionable law that was ever proposed, and we can imagine no act which will become so justly odious and detestable. The machinery is of the most complicated and multiform sort. It violates the sanctity of men's domestic and business affairs, exposes every person's financial transactions, requires of each person a large amount of book-keeping and ready swearing, and will make the number of officials, and, of course, the compensation of persons collecting the revenue, twice the unnecessary and extravagant number now paid. The bill provides for the establishment of a distinct branch of the government, which may properly be styled the grand inquisitorial and confiscating office;

and this department is to be clothed with powers and functions which, if enforced, would produce a revolution in Austria or Turkey. We hope the Legislature will lay this ponderous bill, with its inquisitions double and treble taxations, exactious oaths, confiscations, fines, penalties and forfeitures, on the table, leaving the present revenue laws in force until the public debt of the State is discharged.' (Chicago Tribune, Jan. 1871.)

The commission, would, therefore, respectfully ask the Legislature, through his Excellency, the Governor of the State, for instructions as to the system they shall recognize in the preparation of a code of laws; and a further limited time for the completion of the work. They would ask the people of the State to give to the facts and arguments presented in this report a fair and candid consideration, and not allow themselves to be prejudiced by any accusations that may be made to the effect that the commissioners, in opposing the direct taxation of personal property in the possession of individuals, are acting in behalf of the moneyed and against the landed interest of the State; and generally to so express their opinion that the commissioners may be able to judge, before completing their work, what final results are likely to command a general approval.

In regard to the obtaining of a more efficient administration of the revenue laws, without which no system of taxation can be made satisfactory, the views of the commissioners have been heretofore given.

Reference is also made to the appendices of this report for a more full presentation of the following topics: Appendix *A*, *Local taxation in Canada;* appendix B, *A detailed analysis and review of the legal questions and court decisions involved in the determination of the situs of personal property, and the jurisdiction of States in respect to the same;* appendix C, *Outline codes of law, in accordance with the provisions of the new system of taxation recommended by the commissioners.*

For the length of their report the commissioners offer no apology. The subject committed to them for investigation is one of almost infinite detail, and intimately concerns every material interest of the State, present and prospective. To discuss it other than comprehensively was to discuss it imperfectly; to attempt to draft a code of law without full inquiry into the conditions which are to serve as its basis was to follow ancient precedent. The commissioners do not claim to have exhausted the subject, for they are conscious of having omitted many things, which if opportunity is offered they propose to present hereafter; but they are confident that they have made the

best use of the time which has been placed at their disposal, and have been influenced by no other motives than an earnest desire to subserve the interest, and promote the development of the State.

Respectfully submitted.

DAVID A. WELLS.
EDWIN DODGE.
GEORGE W. CUYLER.

To His Excellency,

JOHN T. HOFFMAN,

Governor of the State of New York.

ALBANY, *February*, 1871.

APPENDIX.

A.

LOCAL TAXATION IN CANADA.

In Montreal, which, in respect to municipal administration, may be taken as a type of the provincial towns and cities, there is no tax whatever upon bank capital or money at interest, and comparatively none upon other personal property; but the revenue necessary to defray municipal expenditures is derived from the following sources: 1. An assessment of 1s. 6d. in the pound on the assessed *yearly value* of all real property; this levy to be made, in the first instance, upon the owners, but, on default of payment, then upon the occupiers, who are authorized to deduct the amount of the assessed tax from the rents to be paid for the property. 2. An extra assessment of one-half cent per every four dollars of the assessed value of all real property, to be paid by the owners, in addition to the assessment before mentioned. 3. An annual tax upon all merchants and dealers, at the rate of *thirty dollars for every four hundred dollars of the assessed yearly value of the premises occupied or used by them.* 4. An annual duty, in addition, upon keepers of taverns or places of entertainment, varying from twenty-seven dollars when the assessed yearly value of the premises used shall not exceed one hundred and sixty dollars, to one hundred and seventy-five dollars when the yearly value of the premises used exceeds two hundred dollars, and is less than two thousand four hundred dollars; and, when in excess of the last mentioned sum, an additional rate of seventeen dollars and fifty cents for every four hundred dollars over two thousand four hundred dollars. 5. An annual duty, varying from one hundred and sixty dollars to two hundred dollars, on auctioneers, exclusive of any other rate or duty to which said persons may be otherwise liable. 6. An annual duty of eight hundred dollars upon every gas company or gas factory. 7. An annual duty of eighty dollars upon livery stable keepers; and an additional annual duty of three dollars upon every two-wheeled vehicle, and of four dollars upon every four-wheeled vehicle kept for

hire. In the case of vehicles kept for hire by keepers of houses of public entertainment, the above rates are increased, respectively, to six dollars and eight dollars. 8. An annual duty of two hundred dollars on pawnbrokers. 9. An annual duty of two dollars and fifty cents on each working horse or mare; and of six dollars on every pleasure horse or mare kept or owned in the city. 10. An annual duty of from three dollars to four dollars on vehicles kept for hire by persons other than those above mentioned, and an annual duty of from eight to twelve dollars on stage coaches and omnibuses. 11. An annual duty of from six dollars to twenty dollars on vehicles kept for pleasure. 12. An annual duty of one dollar and fifty cents on each dog, to be paid by the owner or keeper. 13. An annual duty, varying from eight dollars to twenty dollars, on peddlers and hawkers. 14. An annual duty of one hundred and fifty dollars on the proprietor of each and every theater, in addition to the assessment on the yearly rental of the building. 15. A tax of one hundred dollars on every transient amusement or exhibition; and a further tax of twelve dollars for each and every day or night such exhibition or amusement shall be open to the public. 16. An annual tax of two hundred dollars on ferry boats. 17. An annual tax of four hundred dollars on every person or firm engaged in the business of banking; of one hundred and fifty dollars on brokers or money changers; eighty dollars on commission merchants and money lenders, and two hundred dollars on insurance agents. 18. An annual tax on telegraph companies of four hundred dollars. 19. An annual tax on distilleries at the rate of eighty dollars for every four hundred of the assessed yearly value of the premises occupied; and, on brewers, a similar tax at the rate of sixty dollars. 20. An annual tax of one hundred dollars upon every billiard table, bagatelle board, or any other gambling board kept at any place or house of public resort, and a similar annual duty on every bowling alley. 21. An annual duty of forty dollars on every brick yard. 22. An annual duty of ten dollars on every horse dealer. In addition to the above rates, the use of water supplied by the city is charged for specifically.

Taxation in the Province of Quebec.—"The system of taxation provided in the municipal code of the Province of Quebec (1870), defines taxable property as follows:

1st. All lands and real estate, except property belonging to the government, and to religious, charitable and educational institutions, provided that the same is not held by such institutions for the purpose of deriving a revenue therefrom.

2d. The yearly salary of all civil officers of the government, federal or provincial.

3d. The annual income of professional men, merchants, bankers, teachers, etc.

4th. The annual salary of all other persons engaged in another's service, and whose salary exceeds $400.

"If a rate-payer, who possesses property declared to be taxable, has his domicile in one local municipality, and his place of business, from which is derived such taxable property, in another, such property is only taxable in the local municipality in which is situated his place of business."

The council of every local municipality may, by resolution, exempt from the payment of municipal taxes, for a period not exceeding five years, any person who carries on any business, trade, mining or manuafacturing enterprise whatsoever, as well as the land used for such business, etc.; or agree with such person for a fixed sum of money, payable annually, for any period not exceeding ten years, as commutation of all municipal taxes."

B.

SITUS OF PERSONAL PROPERTY AND THE JURISDIC TION OF SOVEREIGNTIES IN RESPECT TO SUCI PROPERTY, UNDER VARYING CIRCUMSTANCES.

The ordinary rule or fiction of law (*Mobilia personam sequuntur* is, that all personal property follows the person of the owner, an accordingly for purposes of taxation, personal property has bee generally held to have no *situs* away from the person or residence c the owner, but is deemed to be present with him, at the place of hi domicile. In the State of New York, this was both the law an the practice until 1861–2, when the Court of Appeals, in the case c *Hoyt* v. *The Commissioners of Taxes of the City of New Yor* (23 N. Y., 224), decided, that although the law provides "that ever person shall be assessed in the town or ward where he resides *for al personal estate owned by him*," a resident of New York cannot b taxed for personal property actually situated out of the State. Sinc then all personal property of a visible nature or of the nature of chat tels, which can clearly be held to have a *situs*, belonging to a residen of New York and actually situated without the State, has beer exempted from taxation, especially when a specific demand has beer made for such exemption; but personal property of the nature of negotiable instruments, stocks and *choses in action*, are generally held to be taxable to residents of New York, irrespective of wha may be their actual *situs*. In Massachusetts the precept of the asses sors of the city of Boston, for example, for the year 1870, served or tax-payers in connection with a blank for the specific return of per sonal property, requires that there shall be returned in the schedule for valuation and taxation. 1. "All goods, wares and merchandise or any other stock in trade *either within or without the commonwealth.*" 2. "Vessels or parts of vessels at home or abroad." 3. "Shares in all incorporated companies except national banks, wherever located, chartered by or organized under the laws of any State or nation other than the commonwealth of Massachusetts."

The practice of the assessment of personal property is also sub stantially the same in Rhode Island and Connecticut, except that the latter State provides that "it shall not be necessary to include in the list of any person liable to be assessed any property situated out of

the State when it can be made satisfactorily to appear to the assessors that the same is fully assessed and taxed in such State to the same extent as other like property owned by citizens of such State." In Rhode Island and Massachusetts no such liberality of assessment is reported, although the lack of it obviously tends to and actually does result in double taxation; and in a case recently tried before the supreme court of Connecticut, *Sprague* v. *The Town of Lisbon*, the plaintiff, a citizen of Rhode Island, sought to recover taxes assessed on personal property in the form of machinery in a cotton mill located and working in Connecticut, on the ground that the same was taxed as personal property to the owner in the State of Rhode Island.

We now propose to exhibit how far the decisions of the highest courts concur or conflict with the above referred to opinions and practices.

The question at issue, viz., the *situs* of personal property, in fact, ranks among the very oldest questions at law of which there is any authentic record; dating back even to a trial in the time of the Amphyctionic council, B. C., 400. The matter in controversy in this early case, and others similar of subsequent date, although belonging to the domain of international rather than revenue law, nevertheless, involve points of a character which are to-day fundamental to the latter, viz., as to the extent of the power of a conqueror and of the sovereign *de facto* (or what is the same thing, of the State itself), over incorporeal things; which last may be defined to be "rights," which exist in mental apprehension as connected with a given subject to which they are attached, and with a material object upon which they can be exercised; and not external things, *chattels*, which by seizure can be made the subject of actual possession. The weight of the authorities on international law is first: that such incorporeal things as debts (bonds, mortgages, money at interest, *choses in action*) do not accrue to a conqueror or sovereign prince as a consequence of the possession of the person who is entitled to them; the legitimate inference from which is, *first*, that personal property, of an incorporeal or non-visible character, cannot be held to follow the person; *second*, that incorporeal rights do not accrue to a conqueror, a sovereign, or a State, from the circumstance even of possession of the instruments or documents which contain the legal statement of the obligation of the obligor, which are, so to speak, the title deeds of the obligee, *because they are not the debt itself, but one means, and*

*not the only means, under all circumstances of proving that it exists ;** a conclusion which has been substantially affirmed by the supreme court of Pennsylvania, in a recent decision to the effect, that a railroad mortgage bond was not in itself property, but simply evidence of the existence of property in the State where the bond was created and that the *situs* of the property was therefore necessarily independent of the *situs* of the bond. And this position, it may be observed, finds further confirmation in the circumstance that a creditor may recover a debt, even though the instruments which constitute the main evidence of the title to the obligation may be lost or destroyed.

The case involving the *situs* of personal property, before referred to, as having been tried before the Amphyctionic Council of Greece arose in this wise: After the conquest of Thebes, Alexander the Great found documents in which the Thessalians acknowledged themselves to have borrowed an hundred talents from the Thebans. The Thessalians had been allies of Alexander; and in return for their aid, he gave them the documents which contained an acknowledgment of the debt. The Thebans, nevertheless, subsequently reinstated in the possession of their state by Cassander, demanded payment of their debt from the Thessalians. It was admitted on all hands that the hundred talents had been borrowed and not repaid and the question of law depended on the validity of the gift by Alexander. The cause was heard before the great international tribunal of Greece, the Amphyctionic Council, and the decision, although not specifically handed down, is inferred to have been in favor of the Thessalians. But if such was the decision, it must not be therefore concluded, says Mr. Phillimore, that it contravenes the acknowledged principles of international law respecting the transfer of incorporeal property, for the majority of jurists, supporting the decisions of the Amphyctions, agree that Alexander had become so entire and absolute a master of Thebes—the heir, as it were, and the universal successor to a defunct and extinguished State—that he was possessed of every thing and right appertaining to that city.

Another case of similar character to that of the *Thebans* v. *Thessalians*, but of modern date, grew out of the formal appropriation by Napoleon I., in 1808, of the debts, notes, mortgages, etc., of the Elector of Hesse Cassel, when the former became sovereign by conquest and treaty of the Electorate; which debts, in all or part, were subse

* Phillimore on International Law.

quently released or canceled by Napoleon I. for a consideration. On the overthrow of Napoleon in 1814, when the Elector was restored to his sovereignty and estates, he denied the validity of the alienation of the debts in qnestion, and instituted proceedings to compel a second or re-payment to himself personally. The case, referred to the appropriate tribunals of Germany, remained a matter of dispute for many years, and has since taken its place among the *causes celebres* of public or international law. The decisions, so far as any were arrived at, were to this effect: That the Elector could not be held to have constructive possession of the debts (the circumstances being considered under which the money was borrowed), because he had retained possession of the instrument containing the written acknowledgments of the debtors; but that their *situs* and possession was, on the contrary, with the person who had become the *de facto* sovereign of the States of the Elector, acknowledged as such by the subjects over whom he ruled, and recognized also by foreign States.

Coming down to more recent times, the decisions of interest and importance in respect to this subject may be appropriately grouped under the head of several leading and distinct propositions, the first of which may be stated as follows:

PERSONAL PROPERTY DOES NOT FOLLOW THE PERSON OUT OF THE STATE FOR THE PURPOSE OF TAXATION, BUT CAN BE TAXED WHEREVER MAY BE ITS SITUS.

In support of this assumption, the following cases and rulings at law may be cited:

1. (*Duer* v. *Small*, 17 Howard's Practice, 201; S. C., 7 American Law Register, p. 500). In this case, before the Circuit Court of the United States for the Southern District of New York, the plaintiff, a citizen of New Jersey, engaged in banking business in New York city, was taxed on personal property in New York, under a statute of that State which provided, "that all persons doing business in New York, as merchants, bankers or otherwise, and not residents of the State, shall be assessed and taxed on all sums invested in their business, the same as if they were residents of the State;" residents and non-residents, with respect to taxes on personal property invested in business in the State, being put upon an equality. The assumption of the plaintiff was, that the law of New York was in violation of the Constitution of the United States. The court (Ingersol, J.) sustained the validity of the tax, on the ground that

the property taxed was within the State and received the protectio of its laws, and that it was right that the owner should afford th State a recompense or consideration for such protection. "There i no higher law of the United States which gives a non-resident th right to demand that the property of the resident citizen should pa for the protection afforded by the laws to the property of a non-resi dent. The equal 'immunities and privileges' secured under th Constitution to the citizens of each State, in the several States, doe not demand such a requirement as this." It was admitted by th complainant that the real estate of a non-resident is liable to pa taxes for the protection afforded it by the State where it is situated and the chief reason *urged* why personal estate should not follow th same rule was, that the rule of law is that personal estate follows th person of the owner, and that, therefore, it may be taxed in the Stat where the owner is domiciled. But the court held, *that if it was s taxed*, it would not follow that it could not be taxed in the Stat where it actually was and where protection was actually afforded t it. "Bank stock is personal estate; according to the rule of law, i follows, with all other personal property, the person of the owner Such stock, whether owned by a resident or non-resident, is usuall taxed in the State where the bank is located. It is believed that th laws taxing such stock are not obnoxious to the charge of being opposed to any constitutional law, either State or national. It would seem to be enough that the property of a non-resident, whether tha property be real or personal, should be put upon an equality, in respect to taxation, with the property of a resident, without requiring that it should have greater privileges."

"The taxing power of a State is one of its attributes of sovereignty, and where there has been no compact with the federal government, or session of jurisdiction for the purposes specified in the Constitution, this power reaches all the property within the State."

2. A more important case in support of the principle that personal property does not follow the person out of the State for purposes of taxation, is to be found in the 23 New York Reports, p. 224. *People ex rel. Hoyt* v. *Commissioner of Taxes.* In this case the relator was assessed for personal property in the city of New York, and resisted the taxation on the ground that although he had personal property outside of the State, he had none within the State in excess of his just debts and liabilities; the personal property in question without the State being capital employed in business in

New Orleans and farm stock and household furniture in New Jersey; each taxable by law in the places where situated. The Court of Appeals decided the assessment to be illegal, and held (*Comstock, Ch. J.*) that under the statutes of New York relating to taxation, the personal property of a resident actually situated in another State or country is not to be included in the assessment against him. The illogical consequences of adhering to the usual theory, that personal estate for the purposes of taxation has no *situs* away from the person or residence of the owner, but is always deemed to be present with him at the place of his domicile, were thus stated by the chief justice in rendering his opinion: "Goods and chattels *actually within this State* are not here in any legal sense or for any legal purpose if the owner resides abroad; they cannot be taxed here because they are with the owner, who is a subject or citizen of some foreign State. On the same grounds, if we are to have harmonious rules of law, we ought to relinquish the administration of the effects of a person resident and dying abroad, although the claims of domestic creditors may require such administration. So, in the case of the bankruptcy of such a person, we should at once send abroad his effects, and cannot consistently retain them to satisfy the claims of our own citizens. Again, we ought not to have laws for attaching the personal estate of non-residents, because such laws necessarily assume that it has a *situs* entirely distinct from the owner's domicile; yet we do in certain cases administer upon goods and chattels of a foreign decedent; we refuse to give up the effects of a bankrupt until creditors here are paid, and we have laws of attachment against the effects of non-resident debtors. These, and other illustrations which might be mentioned, demonstrate that the fiction or maxim, "*mobilia personam sequuntur*" is by no means of universal application; like other fictions, it has its special uses; it may be resorted to when convenience and justice so require; in other circumstances, the truth, and not the fiction, affords, as it plainly ought to afford, the rule of action. But these rules apply only to property which is capable of having an actual *situs*, and has one within or without the State."

3. A denial of the fiction of law that the domicile of the owner draws to it personal estate wherever the same may happen to be, was also practically given by the supreme court of the United States, in the case of *Green* v. *Van Buskirk, Dec.*, 1868 (7 Wallace, 139). In this case one Bates, who lived in Troy, N. Y., and owned certain iron safes in Chicago, Illinois, in order to secure an existing debt, mortgaged them to Van Buskirk, also a citizen of New York. Two

days after this, one Green, also a creditor of Bates, sued out of the proper court of Illinois a writ of attachment, caused it to be levied on these safes, got judgment and sold the property. At the time of the levy of this attachment, the mortgage had not been recorded in Illinois, nor had possession of the property been delivered under it; both record and delivery being necessary by the laws of Illinois, though not by those of New York, to the validity of the mortgage as against third parties. In this state of the law in Illinois, Van Buskirk sued Green in one of the inferior courts of New York for taking and converting the safes sold, as already mentioned, under the attachment. Green pleaded in bar the attachment proceedings in Illinois. The New York courts held that the only question was Van Buskirk's property in the safes on the day of attachment; that the existence or non-existence of such property was to be decided by the law of the domicile of the parties, and finally that, although the property was situated in Illinois, yet the title to it by the law of New York was complete in Van Buskirk on the execution of the mortgage. The supreme court of the United States reversed this decision, and held that the fiction of law that the domicile of the owner draws to it its personal estate wherever it may happen to be, yields whenever for the purposes of justice that the actual *situs* of the property shall be examined. Referring to the case previously mentioned of *Hoyt* v. *Commissioner of Taxes*, Mr. Justice Davis says: "This fiction has yielded in New York on the power of the State to tax the personal property of one of her citizens situated in a sister State, and always yields to laws for attaching the estate of non-residents, because such laws necessarily assume that property has a *situs* entirely distinct from the owner's domicile."

4. In the case of *Sprague* v. *The Town of Lisbon*, the question at issue being whether machinery in Connecticut, personal property of the plaintiffs, citizens of Rhode Island, and as such taxable under the laws of the latter State, was also taxable in Connecticut, the supreme court of errors of the State of Connecticut (Hinman, J.), decided that the same was properly taxable at the place of its actual *situs* and entirely irrespective of the domicile of its owner.

PERSONAL PROPERTY DOES NOT FOLLOW THE PERSON, AND IN THE FORMS OF NEGOTIABLE INSTRUMENTS MAY BE TAXED IN THE DOMICILE OF THE DEBTORS.

In the foregoing cases, the questions decided have all had reference to the *situs* of such personal property as goods, machinery and chat-

tels which are clearly visible; but that personal property also, in the form of negotiable instruments, does not follow the person for the purposes of taxation would seem to be sustained by the following facts and decisions:

1. England, Austria and Italy tax the non-resident holders of their national debts at their place where the debt is held to have been created or is now inscribed.

2. Attachments or processes of law are valid against all personal property in the nature of negotiable instruments in the place where such instruments are situate, irrespective of the domicile or residence of the owner.

3. In the case of *Maltby* v. *Reading Railroad Co.* (Smith Penn. Reports), the plaintiff, a non-resident in the State of Pennsylvania, resisted State taxation on a railroad bond issued by the defendants and secured by a mortgage on their road, on the general ground that the property taxed was wholly personal and followed the owner out of the State. The court (Woodward, C. J.), sustained the taxation on the ground that a railroad mortgage bond, is a mere paper evidence of property existing at the place where the bond was created, and used the following language: "The plaintiff cannot enforce the bond where he lives; he must come here to gather its fruits; it is founded upon and derives its value from a mortgage, but that mortgage is here and the franchise and properties which the mortgage binds are here within our jurisdiction. The bond signifies his right to receive so much money out of the mortgaged estate, but that estate not only belongs to our jurisdiction but was in part created by our authority."

4. In case of *Pelham* v. *Rose* (9 Wallace, 106), it was held by the supreme court of the United States, that a promissory note is a physical thing, capable of possession and cannot be regarded as attached by an United States marshal, until the note itself was actually seized and taken into the custody and control of the officer; hence the inference that a negotiable instrument of this character has a *situs* of its own and does not as personal property follow the owner.

5. In the case of the *Ohio and Mississippi Railroad* v. *Wheeler* (1 Black U. S. Reports, 286), it was held that when a corporation is created by the laws of a State, the legal presumption is that its members are citizens of the State in which alone the corporate body has legal existence; hence the inference seems warranted that the stock of a corporation does not follow the person.

6. In the case of *McNeilage* v. *Holloway* (1 Barnwell & Allison's Reports, 218), the court of king's bench, Lord Ellenborough, C. J., presiding, it was decided that negotiable instruments are chattels personal, and that a negotiable note payable to the order of an unmarried woman, becomes the property of her husband upon marriage, without her indorsement; on the ground that it is not a *chose in action* but a chattel personal. If this decision, which is the law of England, is correct, it would seem to follow that all negotiable instruments of this character have their *situs* in the place where they are found and follow the same rule as respects taxation and attachment, as applies to other chattels personal. Taxation, consequently, imposed on all species of property of this nature in States where the property is not actually existing, is unconstitutional as much so as it would be to tax real estate and farm stock—cows, horses, etc., in one State, that are situated in another State.

7. "In truth such instruments (negotiable instruments) are treated, not as mere *choses in action*, but rather as *chattels personal.* Choses in action are not assignable by law; and actions must be brought thereon in the name of the original parties. But negotiable notes are transferable by indorsement; and when transferred the indorser may sue in his own name." (Story's Conflict of Laws, § 359.) "A title to personal property duly acquired by the *lex loci rei situ* will be deemed valid and be respected as a lawful and perfect title in every other country. The like principle will apply where an executor or administrator, in virtue of an administration abroad becomes there possessed of negotiable notes belonging to the deceased, which are payable to bearer; for then he becomes the legal owner and bearer by virtue of his administration, and may sue thereon in his own name, and he need not take out letters of administration in the State where the debtor resides, in order to maintain a suit against him." (Story's Conflict of Laws, §§ 516 and 517; the same principle in *Robinson* v. *Crandall*, 9 Wendell R., 425.)

8. *Negotiable instruments have a situs wherever they may be located.*

In the case of the *The Attorney-General* v. *Bouvens* (4 Meesson & Welsby, 171, 190, 191, 192), Lord Abinger, in 1838, in giving the opinion of the court seems to have decided clearly and explicitly that Russian, Danish and Dutch government bonds, payable to bearer, have a *situs where they are actually situated*, and may there be taxed for probate duty. He says "such an instrument is in effect a *saleable*

chattel, and follows the nature of *other chattels* as to the jurisdiction to grant probate." He cited the case of *Attorney-General* v. *Hope*, decided in the House of Lords, where it was held that registered stocks of the State of New York and the United States, owned by an Englishman dying in England, were not subject to probate duty, on the ground that they were not negotiable instruments which pass by delivery and which are *chattels personal* having a *situs* where found; and that the application of the probate duty depends upon the physical question of locality. In England negotiable instruments are subject to attachment and sale, and since the enactment of 1 and 2 Vic. C., 110, § 12, are subject to execution, and it seems to be a well settled principle of law in that and this country, that such instruments have a *situs* and may be proceeded against *in rem*.

In fact, this class of instruments could not continue to exist as agencies of commerce and as forms of investment, if it was decided that they did not have a *situs* where found. If the *situs* of a bond, payable to bearer, is not with a vendor, he cannot convey title in a case of sale to a *bona fide* purchaser. Certainly no prudent man would buy negotiable instruments in open market, if he was liable to be confronted by a claimant who alleged that at the time of the purchase in such market he was the owner of the negotiable instrument, and a resident of a different district, State or country where was the *situs* of the instrument, and where was consequently the legal title.

9. In New York, bank notes are subject to execution, and all forms of negotiable instruments are subject to attachment and sale as the property of non-resident debtors. In case of attachment, we sell the available value of these instruments in the market; we do not proceed against the debtors; we sell the instruments as chattels. It would seem that the constitutionality of the attachment laws of the various States against negotiable instruments cannot be seriously questioned. The *situs* is the main element in a negotiable instrument payable to bearer; and the decision of the United States court in the case of *Railroad* v. *Jackson* (7 Wallace, 262), that double taxation, by different States, is unconstitutional, seems to decide, in harmony with the decisions in England and on the continent, that the State where the actual *situs* of negotiable instruments (not *in transitu*) is, must be the only place where a constitutional tax can be levied; and that in case of conflict of jurisdiction (*Green* v. *Van Buskirk*), the actual *situs* must control.

10. Again, the principle that a State or sovereignty can exercis sovereignty for taxation over any negotiable instruments situate within its territory, and without any regard to the citizenship or dom cile of their owners, finds confirmation in a recent provision that ha been adopted by the authorities of Great Britain, in reference to th British stamp act. By this provision it is required, that every securit of a foreign or colonial government, municipal body, corporation o company, bearing date after the 3d of June, 1862, made or issued i the United Kingdom, or upon which interest is payable, or which i negotiated in any way within Great Britain, must bear an *ad valoren* stamp of one-eighth per cent. The words of the act cover all varietie of foreign and colonial securities; not only such as may be regarded i the light of public securities, but also those of private corporations an the companies. The clauses of the act referred to are to the followin purport: "The term foreign securities means and includes every secu rity for money by or in behalf of any foreign or colonial State, gov ernment, municipal body, corporation or company, bearing date o signed after the 3d day of June, 1862 (except an instrument charge able with duty, as a bill of exchange or promissory note): 1. Whic is made or issued within the United Kingdom; 2. Upon which an interest is payable in the United Kingdom; 3. Which is assigned transferred, or in any manner negotiated within the United Kingdom Every person who, within the United Kingdom, makes, issues, trans fers, negotiates, or pays any interest upon any foreign security, no being duly stamped, shall forfeit the sum of £20."

Personal Property Follows the Person out of the State.

The principle that personal property does follow the person out o the State, and that non-resident stockholders, therefore, cannot be taxed on dividends in a corporation within the State, finds support i the following decisions:

Oliver v. *Washington Mills*, 11 Allen (Map Reports) p. 268, i which it was held that non-resident stockholders cannot be taxed o their dividends in Massachusetts, on the ground that they are liable to taxation in the States where they reside, and a taxation in Massa chusetts would amount to a discriminating or double taxation o non-resident holders of stock in such corporations.

And in the case of *McKeen* v. *Northampton Co.* 13 (Wright Penn. Reports, p. 519), it was held: that every citizen of the State and all the property accompanying him personally, or falling legiti-

mately within the territorial limits of the State, is subject to the power of taxation. The interest which a stockholder has in the stock of a corporation is personal and is controlled by the law of his domicile. Capital stock owned by a citizen of Pennsylvania in a manufacturing corporation located in another State is taxable in Pennsylvania for State and county purposes.

The following decisions of the highest courts, positively determining, or looking to, the exemption of certain species of personal property from taxation, as well as determining the *situs* of other species of such property for the purposes of taxation, also constitute an important department of the subject under consideration.

First. No State can tax goods imported from foreign countries in the hands of the importer and in the original and unbroken packages. This question was decided by Chief Justice Marshall in the case of *Brown* v. *Maryland* (12 Wheaton, 449). The question was upon the legality of a license tax imposed by the State upon a merchant as a prerequisite of the right to sell an imported article. The court held that this tax, though indirect in form, was in fact a duty on imports, and therefore illegal.

Second. The goods of a non-resident owner sent to New York for sale, without re-investment of the proceeds, are not liable to taxation as personal property. In the case of the *Parker Mills* v. *Commissioners of Taxes of the City of New York* (23 New York Reports, p. 242), it appeared that the relator was a corporation foreign to New York, manufacturing nails in the State of Massachusetts, with a depot and agent in the city of New York, to whom the nails were transmitted for sale. Its only business within the State of New York consisted in making such sales, the proceeds of which were remitted at once to the corporation in Massachusetts; and when sales were made upon credit the securities received were sent to the corporation for collection. The tax commissioners of New York city held that the corporation was conducting business in the city, and assessed it on the value of the nails in store, regarding that value as the amount or sum invested in said business in New York. The supreme court affirmed the proceedings, but the court of appeals (Selden, J.), June, 1861, reversed the decision and held that the case was not included in the act of the State, chapter 37 of 1855, section 1, which was designed to reach the capital of non-residents employed within the State in a continuous business; and that it was never the policy of the State to impose

taxes upon property sent into its territory for the mere purpose sale. The court further held the goods sold by the agent of th Parker mills to be property *in transitu;* the same in princip with the case of a drover, resident of another State, who tran ports his herds of cattle by railroad to the city of New York fo sale. Since the decision in the above case, firms or corporation established in other States, but selling their own goods exclusivel in New York, although permanently located for such purposes sale in respect to their stores, warehouses or agents, have been hel to be exempt from taxation. It is, however, to be observed that th decision in this case turned upon the assumption by the court tha the law of New York, providing for the taxation of non-resident doing business permanently in New York, did not, at the same time authorize the taxation of property *in transitu*, but did not discuss q question the right of the State to tax such property *in transitu*, i case the same should be deemed expedient.

Since the rendering of this decision, such a right, however, on th part of a State to tax goods brought within its borders from othe States, exclusively for sale, provided that similar taxation is imposed o like property, the product of its own citizens, has been affirmed by th supreme court of the United Stales in the case of *Woodruff* v. *Pa ham* (8 Wallace, 138). In this case the city of Mobile, Alabama taxed sales of merchandise for municipal purposes, which tax wa resisted by Woodruff and others, auctioneers, who, as consignees received goods and merchandise, the products of States other tha Alabama, and sold the same in Mobile to purchasers in the origina and unbroken packages. The payment of the tax was resisted on th ground that it was repugnant to the provisions of the Constitution which ordain that

"Congress shall have power to regulate commerce among th several States."

"No State shall levy any imposts or duties on imports or exports."

"The citizens of each State shall be entitled to all the immunitie and privileges of the citizens of the several States."

At the same time another similar case was presented to the con sideration of the court (*Hinson* v. *Locke*), in which the collection of State tax on whiskey, so far as the same was sought to be made appli cable to whiskey manufactured in another State, and consigned to a agent in the State of Alabama for sale was contested. It is, however to be here stated, that the taxes in both these instances were not dis-

criminating taxes against the imported products of sister States, but were made applicable alike to all goods of a similar character produced within the State.

The court affirmed the legality of the taxes in question and held, by Mr. Justice Miller, that the term import, as used in that clause of the Constitution which says "that no State shall levy any imposts or duties on imports or exports," does not refer to articles imported from one State into another, but only to articles imported from foreign countries into the United States; hence an uniform tax imposed by a State on *all* sales made in it, whether they be made by its own citizens or the citizens of some other State, and whether the goods sold are the produce of the State enacting the law, or of some other State, is valid.

From the judgment thus affirmed, Judge Nelson dissented, and, in an opinion of great force and ability said: "I am unable to agree to the judgment of the court in this case; the valid question is, whether the State can tax the sale of an article, the products of a sister State, in the original package, when imported into the former for a market under the Constitution of the United States. If she can, then no security or protection exists in this government against obstructions and interruptions of commerce among the States; and one of the principal grievances that led to the convention of 1787, and to the adoption of the federal Constitution, has failed to be remedied by that instrument; and hereafter (for this is the first time since its adoption that the clause in question has received the interpretation now given to it), this inter-State commerce, is necessarily left to the regulation of the legislatures of the different States." "The State of Pennsylvania," for illustration, said the judge, "supplies New York with the article of coal from her mines. According to the judgment of the court in the present case, the State of New York may tax these sales if she makes no discrimination, and such a law may be passed and enforced without imposing any burden on her own people, as there is no coal of any value in the State but what is brought into it from abroad. So, in turn, Pennsylvania can tax the salt and plaster of New York carried into that State with a like impunity to her people; Massachusetts may tax the grain and flour of the west carried into the State by like law, as she does not raise a sufficient supply for home consumption, and a general tax upon all sales would not harm her people."

It is impossible, furthermore, in considering the decision of the court sustaining the legality of this tax, to resist the conviction that

the prevailing idea in the mind of the judge who gave the opinio and the idea possibly which constitutes the basis of this seeming anomalous and extraordinary decision, was that it was necessary f the interests of the State to enlarge to the fullest extent the power f the taxation of personal property, and that the question did not con up for consideration whether the interests of the State would not l more fully subserved by freeing the movement and interchange property from all restrictions, and assessing the taxes requisite for t purposes of raising revenue upon more tangible and less objectionab objects.

Third. Ships at sea have no situs other than at the port at whi they are registered. In the case of *Hoyt* v. *The Commissioners Taxes of New York City*, the court of appeals of New York (Cor stock, Ch. J.) expressed the opinion that ships at sea can have *situs* other than the port at which they are registered, and are just taxable to the owner as personal property, at such places of regist only. The laws of the United States also provide that a mortga on a ship can be executed only at the port where the ship is reg tered; yet notwithstanding it is the usual practice in New York a elsewhere to assess ships as personal property to their owners at t place of the owner's domicile.

In the case of *The City of New Albany* v. *Meekin* (3 Ind. R., 481), this question has been made the subject of a legal decision. T defendant was a resident of New Albany, and was assessed for pe sonal property in respect to a steamboat enrolled at Louisville, Ke tucky, and which touched only occasionally at New Albany. It w held that the tax was illegal, the supreme court observing that "t only question we have to consider is whether the boat or the defen ant's share is within the city."

In the case of *Hays* v. *The Pacific Mail Steamship Company* (1 Howard, 713), in which the company resisted taxation on their ve sels by the city of San Francisco, the supreme court of the Unite States declared the taxation illegal, for the following reasons: T provisions of the acts of Congress, 31st December, 1792, and 29t July, 1850, "very clearly indicate that the domicile of a vessel th requires to be registered, if we may so speak, or home port, is th port at which she is registered, and which must be the nearest to th place where the owner or owners reside. In this case the home po of the vessels was the port of New York, where it is admitted, th capital invested is subject to State, county, and other local taxes. W

are satisfied that the State of California had no jurisdiction over these vessels for the purpose of taxation. They were there but temporarily, with their *situs* at the home port, where the vessels belonged, and where the owners were liable to be taxed for the capital invested."

Fourth. Two States cannot tax at the same time the same property nor can a State tax property and interests lying beyond her jurisdiction. This principle was affirmed by the supreme court of the United States, December, 1868, in the case of *The Northern Central Railroad* v. *Jackson* (7 Wallace, 262). The railroad corporation in question, extending from Baltimore in Maryland to Sunbury in Pennsylvania, was the result of the consolidation of four railroad companies; one incorporated by the State of Maryland and three by the State of Pennsylvania. The latter State imposed a tax of three mills per dollar of the principal of each bond issued by said road, which tax the company, at their office in Baltimore, deducted from the coupons of the bonds of said consolidated road held by Jackson, an alien, resident in Ireland. The court, by Mr. Justice Nelson, decided adversely to the tax, on the ground that the bonds were issued upon the credit of the line of the road, a portion of which was within the jurisdiction of the State of Maryland, and that the security, bound and pledged for the payment of the bonds and of the interest on them, embraces the Maryland portion of the road equally with that portion situated in the State of Pennsylvania; respecting which condition of affairs, the court used the following language:

"It is apparent, if the State of Pennsylvania is at liberty to tax these bonds, that to the extent of this Maryland portion of the road she is taxing property and interest beyond her jurisdiction. Again, if Pennsylvania can tax these bonds, upon the same principle Maryland can tax them; this is too apparent to require argument. The consequence of this, if permitted, would be double taxation of the bondholder; the effect of this taxation is readily seen; a tax of three mills per dollar of the principal, at an interest of six per centum, payable semi-annually, is ten per centum per annum of the interest; a tax, therefore, by each State, at this rate, amounts to an annual deduction from the coupons of twenty per centum; and if this consolidation of the line of the road had extended into New York, or Ohio, or into both, the deduction would have been thirty or forty. *If Pennsylvania must tax bonds of this description, she must confine it to bonds issued exclusively by her own corporations.* Our conclusion is, that to permit the deduction of the tax from the coupons in

question would be giving effect to the acts of the Pennsylvani Legislature upon *property and interests lying beyond her juri diction.*"

Fifth. Taxation of Inter-State Instruments.—In the case of *Alm* v. *California* (24 Howard U. S. Reports, p. 169), it was hel that taxation by States of bills of lading was a tax on commerc between the States, or a tax on foreign commerce, and therefor illegal. This case arose under a statute of California, whic imposed a stamp tax on bills of lading for the transportation o gold and silver from any point within the State to any poin without the State. The question, as presented to the supreme cour of the United States under this statute was stated to be as follows Is this stamp act, so required to be paid by State authority, a impost, or an export, within the meaning of the constitutional prohi bition upon the States? It was held by an unanimous bench tha the tax fell within the terms of the prohibition, or was in conflict wit the clause of the Constitution giving Congress the right to regulat commerce with foreign nations. In a subsequent review of this case 1868, Mr. Justice Miller stated that the case was well decided, bu on a different ground, viz.: "That such a tax was a regulation o commerce; a tax imposed on the transportation of goods *from on State to another*, over the high seas, in conflict with that freedom o transit of goods and persons between one State and another, whic is within the rule laid down in *Crandall* v. *Nevada* (6 Wallace U. S Reports, 382,) and with the authority of Congress to regulate com merce among the States." It therefore follows that bills of lading given for goods transported from one State to another are *inter-Stat instruments*, and as such cannot be subjected to State taxation; and it would further seem that bills, drafts, bonds, etc., made in one State and payable in another, are similar interstate instruments, and as such cannot be taxed by State authority any more than bills of lading, the taxation of which by States, as above shown, has been decided to be unconstitutional.

Is uncalled for capital an "asset" of a company or corporation? In a recent English case of *Lishman* v. *The Colonial and General Gas Co.*, the vice-chancellor of Great Britain, decided that the uncalled capital of a company is an "asset," to be included among "the lands, property and effects" of a company, charged by its debentures. In cases of this sort, he remarked, there was in princi-ple, no difference between a call that must be paid when made and

any other property of the company; no room for the distinction attempted to be drawn between existing and non-existing assets of the company.

The following considerations of a general nature respecting the *situs* of personal property, for the purposes of taxation, are also worthy of consideration.

Judge Story, referring to the *situs* of goods and chattels, observes: "A nation within whose territory any personal property is actually situated, has entire dominion over it while therein in point of sovereignty and jurisdiction, as it has over immovable property situated there." (Conflict of Laws, § 550.)

Chief Justice Comstock, in the case of *Hoyt* v. *The Commissioners of Taxes of the City of New York*, also says: "There seems be no place for the fiction" (that personal property follows the owner), "in a well adjusted system of taxation. In such a system a fundamental requisite is, that it be harmonious; but harmony does not exist unless the taxing power is exerted with reference exclusively either to the *situs* of the property or to the residence of the owner. Both rules cannot obtain, unless we impute inconsistency to the law, and oppression to the taxing power. Whichever of these rules is the true one, whichever we find to be founded in justice and the reason of the thing it necessarily excludes the other; because we ought to suppose, indeed we are bound to assume, that other States and governments have adopted the same rule. If then, proceeding on the true principles of taxation, we subject to its burdens all goods and chattels actually within our jurisdiction, without regard to the owner's domicile, it must be understood that the same rule prevails everywhere. If we proceed on the opposite rule, and impose the tax on account of the domicile, without regard to the actual *situs*, while the same property is taxed in another sovereignty by reason of its *situs*, then we necessarily subject the citizen to a double burden of taxation; and for this no sound reason can be given."

"To put a strong case; the owner of a southern plantation,* with slaves upon it, may prefer to reside and spend his income in New York; our laws protect him in his person as a citizen of the State, and for this the State receives a sufficient consideration, without taxing the capital which it does not protect. Under our laws, can we tax the wealth thus invested in slave property? They ignore, on the contrary,

* The decision from which this extract is derived was delivered in June, 1861.

the very existence of such property; therefore, there is no room for the fiction, and only according to which the *situs* is supposed to be here. But if we could make room for that fiction it still remains to be shown that some rule of reason, or principle of equity can be urged in favor of such taxation."

"We may reverse the illustration: A citizen and resident of Massachusetts may own a farm in one of the counties of this State, and large wealth belonging to him may be invested in cattle, in sheep or horses which graze the fields, and are visible to the eyes of the taxing power. Now these goods and chattels have an actual *situs* as distinctly as the farm itself. Putting the inquiry, therefore, with reference to both 'are they real estate and personal estate,' so as to be subject to taxation under that definition? It seems to me but one answer can be given to this question, and that answer must be according to the actual truth of the case. If we take the fiction instead of the truth, then the *situs* of these chattels is in Massachusetts, and they are not within this State. The statute means one thing or the other. It cannot have double or inconsistent interpretations; and as this is impossible, so we cannot, under and according to the stutute, tax the citizen of Massachusetts with respect to his chattels here, and at the same time tax the citizen of New York in respect to his chattels having an actual *situs* there. In both cases the property must be within this State or there is no right to tax it at all."

Sovereignty over the Situs of Property.—"Every nation possesses and exercises exclusive sovereignty and jurisdiction throughout the full extent of its territory. It follows, from this principle, that the laws of every State control, of right, all the real and personal property within its territory. The second general principle is, that no State can, by its laws, directly affect, bind, or regulate property beyond its own territory. This is a consequence of the first general principle; a different system, which would recognize in each State the power of regulating persons or things beyond its territory, would exclude the equality of rights among different States, and the exclusive sovereignty which belongs to each of them." (*Wheaton's International Law, ch.* 2, § 2; *Foelix International Prisé, secs,* 9 *and* 10.)

Capital invested without the State.—A resident of this State is not liable to be assessed and taxed here for his capital invested in *loans* in other States, upon *securities* taken and held in those States by his agents. Whether the owner of property thus situated is liable to be assessed for it, depends upon the question whether it can be pro-

perly and legally held to be in this State at the time of the assessment; and if such property has no actual location or *situs* within this State, notwithstanding the owner's residence is here, it is not subject to taxation in the State. (23 N. Y., 232; 21 Vt., 152.)

Negotiable bonds owned by foreign insurance companies and deposited with the State comptroller have a *situs in this State*, and are deemed money in business, within the meaning of the act of 1855, and the companies are properly taxed at the place where they have their principal office or place of business within this State. (Court of Appeals, 1864; *British Commercial Life Insurance Company* v *Commissioners of Taxes*, 18 Abb. Pr., 118, and 31 N. Y., 32.)

C.

OUTLINE CODE No. 1, IN CONFORMITY WITH THE FIRST PROVISION OF SYSTEM RECOMMENDED BY THE COMMISSIONERS FOR THE VALUATION AND ASSESSMENT OF PERSONAL PROPERTY.

AN ACT to exempt certain personal property from assessment and taxation, and to change the method of the assessment of real estate.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. Be it enacted, that hereafter the franchise capital, stock, and the real and personal property of any corporation or association, organized under the laws of this State, as a trust company, plankroad company, turnpike company, savings bank, gas company, ferry company, fire or marine insurance company, or of any corporation authorized to receive deposits or loan money or discount notes or bills, or of any bank organized under the banking act of this State, or under the national banking act, and located in this State, and the shares of said banks, and the ownership of said shares, and all foreign insurance companies doing business in this State, and the capital in business and property of said foreign insurance companies within this State, shall be assessed and taxed according to the existing laws of this State, and according to such laws as may hereafter be enacted.

§ 2. Every person or firm as principal or agent, unincorporated under the banking act of this State or under the national banking act, doing a banking business within this State, receiving deposits and paying drafts or checks at sight, and buying or discounting notes or bills, shall be subject to assessment and taxation in the town or ward where the business is conducted, on the amount of capital employed, but not for a sum less than one-fourth the average amount of deposits during the previous year, subject to sight drafts or checks upon the owners or managers of said banking buisness.

§ 3. No personal property, after the passage of this act, except personal property designated in the first and second sections of this act, shall be subject to assessment and taxation in this State.

§ 4. All real estate, other than real estate described in section one of this act, subject to assessment and taxation according to the present laws of this State, shall hereafter be assessed as follows: All lands shall be assessed exclusive of buildings, and entered in the third column of the books of the assessors, at one-half of their just value; and all buildings on said lands shall be assessed at their full just value, and entered in the books of the assessors also, in the third column for the purpose of taxation.

§ 5. The provisions of any law of this State inconsistent with the provisions of this act are hereby repealed.

OUTLINE CODE No. 2, IN CONFORMITY WITH THE SECOND PROVISION OF THE SYSTEM RECOMMENDED BY THE COMMISSIONERS FOR THE VALUATION AND ASSESSMENTS OF PERSONAL PROPERTY.

AN ACT to exempt from assessment and taxation, under laws heretofore enacted, personal property, except the personal property of certain corporations and the capital or deposits of unincorporated bankers, and to assess the persons, associations or corporations whose personal property is thus exempt, as occupiers of buildings, for personal assessment and taxation; and to equalize taxation and to limit the maximum rate of taxation.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

SECTION 1. The shares in banks organized under the laws of this State or of the United States, and individual bankers doing banking business under the laws of this State, and the privileges and franchises of savings banks shall be assessed and taxed according to chapter 761 of Laws of 1866.

§ 2. The privileges and franchises of every gas company, turnpike company, plankroad company, bridge company, ferry company, and the surplus profits or reserved funds of such company, exceeding ten per cent of its capital, shall be assessed on the full valuation of the capital of the corporation, after deducting the assessed value of its real estate, and shall be taxed in the same manner as other personal and real estate.

§ 3. The shareholders of all trust companies, fire and marine insurance companies, and the shareholders of any corporation (other than State, national or savings banks), authorized to engage in the business of loaning money and discounting paper or receiving deposits, and

ganized under the laws of this State, shall be assessed and taxe on the full value of their shares therein; said shares shall be include in the valuation of the personal property of such stockholders, in th assessment of taxes, at the place, town or ward where the principa office of the corporation is located. And in making such assessmen there shall be deducted from the value of such shares such sum as i the same proportion to such value as is the assessed value of the rea estate of the corporation, and in which any portion of the capital i invested, to the whole amount of the capital of said corporation, an provided further that nothing herein contained shall be held or con strued to exempt from taxation the real estate held or owned by an such company or corporation, but the same shall be subject to State county, municipal and other taxation to the same extent and rate a other real estate is taxed.

§ 4. The president, secretary and other officers of companies desig nated in section three, shall cause to be kept a correct list of th names of the stockholders and the number of shares held by each and such list shall be open to the inspection of the officers authorize to assess or collect any tax from the corporation or the shareholder thereof. The assessment of the shareholders of said corporation shal be on and in consideration of the privileges and franchises granted b the Legislature, and all taxes levied in pursuance of such assessmen against the shareholders shall be paid by the officers of the corpora tion and may be collected in the same manner as other taxes agains said corporation.

§ 5. Every person or firm, as principal or agent, unincorporate under the banking act of this State, or under the national bankin act, doing a banking business within this State, receiving deposit and paying drafts or checks at sight, shall be subject to assessmen and taxation, in the town or ward where the business is conducted, o the amount of capital invested, but not for a less sum than one-fourt the average amount of deposits during the previous year, subject t sight drafts or checks upon the owners or managers of said bankin business.

§ 6. No personal property, after the passage of this act, excep personal property owned by the corporations and associations name in the first, second, third and fourth sections of this act, and the per sonal property designated in the fifth section of this act, shall be sub ject to assessment for the purpose of taxation in this State, except i the following manner:

§ 7. Every person, corporation or firm (other than the corporations, associations and persons or firms subject to taxation according to sections one, two, three, four and five of this act), occupants as owners or as tenants, and not as lodgers or boarders, of any building or part of building subject to taxation as real estate, according to the laws of this State, shall be assessed as occupiers, on the first Monday in September in each year, in the city of New York, and on the first Monday in June in the other portions of the State, for the purpose of taxation, in the town or ward where the building may be situate, a sum equal to three times the appraised fair and just rent or annual rental value thereof; and the sum thus assessed shall be placed in the fourth column of the books of the assessors, and shall be added up with the personal valuations for the purposes of taxation. In estimating the annual rent of any building or part of a building, the actual and bona fide rent thereof, if the said rent be a fair and equitable one and proportionate to the value of the property, shall be the basis of the assessment, but if otherwise, then the assessment may be made on the basis of the interest of the actual value of the building occupied; and where the occupier is the owner of the property, the assessors shall estimate the annual rent of the building or part of building at a sum which it would be worth annually, or ought to obtain, on an occupancy of five years, or on the basis of the interest of the actual value of said building, and the building shall be deemed to include the land on which the building is constructed, and so much of the unbuilt portion of the lot as is usually used and occupied for convenient access to and occupancy of the building, but not to exceed one acre of land adjacent or contiguous to one building.

§ 8. The assessors shall place in the first column of the assessment roll, the names of the taxable occupiers, the number of the building, or the numbers of the room or rooms occupied, and the purpose for which the premises are used, if known, or reported by the occupant; or they may give any other description of the building, or of the occupants, that they may consider will promote the due execution of this law. A separate assessment shall be made against the person, persons, or firms occupying each building, or any part thereof.

§ 9. No person shall be assessed as an occupant of a building, or part of a building, unless he shall own property, or unless he has in his possession and under his control property, as an occupier of a building, or part of a building, subject to execution, according to the laws of this State. Nor shall any person be deemed to be an occu-

pier of a building or part of a building, who is employed as a serva to guard a vacant or unoccupied house or building not containi furniture, merchandise, goods or chattels, except such as may l necessary for his immediate wants as an employe.

§ 10. All the laws of this State for the enforcement and collecti of any personal tax, shall be applicable in the enforcement and colle tion of any tax assessed under this act against any person as t occupier of a building or part of a building; and the amount assess to an occupier, according to this act, shall be deemed to be a person assessment or valuation, and shall hereafter be included in the pe sonal valuation in the levy of all taxes upon real and personal pr perty.

§ 11. In the cities of this State, the owner or owners of buildin known as tenement houses, rented in apartments to several famili at less than one hundred and fifty dollars per annum for each apa ment, shall be deemed the occupier or occupiers thereof.

§ 12. In assessing the personal valuation on the basis of rent value of buildings, all piers, docks, wharves, bridges, and all railw structures, excavations, tracks, sidings, turnouts, bridges, tunnels a embankments, now subject to taxation as real estate, shall be deem for the purposes of this act to be buildings, and the occupiers there as owners or tenants, shall be assessed according to the provisions this act.

§ 13. Any person or his representative deeming himself dispropo tionately assessed by the undervaluation of the property of oth persons, in the assessment of real estate or in the personal assessme on the basis of annual rental value of a building or part of a buildi may appear before the assessors or tax commissioners while sitting a board of review, and may introduce the testimony of a compete witness or expert, and the board of review may also call a compete witness, and an oath shall be administered to the two witnesses any member of the board of review, and the witnesses shall be inte rogated as to the actual value of the real estate and annual rent value of buildings for which the person deeming himself aggriev has been assessed on the assessment roll, and if, after an examinati of the roll and statement of facts, opinions and views by the w nesses, it shall appear to the satisfaction of the board of review th the claimant has been disproportionately assessed and that some or the values on the assessment rolls are less than the actual values, th shall raise the real estate valuation or the personal assessment on t

basis of the rental valuation, or both, of all persons on the assessment roll to the full, fair and just valuation, and thus give relief to the aggrieved party by a full, equal and proportional valuation. The examination taken under this section shall be in writing and shall be subscribed by the persons examined, and with the decision thereon of the assessors or tax commissioners shall be filed in the office of the clerk of the town or city in which such assessment shall be made; and any person who shall willfully swear falsely on such examination before the assessors or tax commissioners shall be deemed guilty of willful perjury.

§ 14. The board of supervisors in no county of this State shall assess or levy, after the first day of December, 1871, any annual tax, unless authorized by a special act of the Legislature, on the property and valuation in any town, at a higher rate than one per cent on the amount of real and personal valuation; nor shall the board of supervisors of any county assess or levy, after the first day of December, 1871, an annual tax upon any ward or city, without special authority of the Legislature, to exceed two per cent on the real and personal valuation; but in equalizing the valuation after December 1, 1871, in all the towns and wards in the county, they shall increase the aggregate real estate valuation and aggregate personal valuation in every town or ward by adding such sum upon the hundred to the valuation of each as will bring the valuation up to the full actual valuation; and no diminution of either the aggregate real or personal valuation in any town or ward shall be made unless the aggregate valuation of the town or ward shall exceed the full actual valuation, and they shall in no instance reduce the aggregate valuation of all the towns and wards below the aggregate valuation thereof as made by the assessors.

§ 15. This act shall not be deemed to repeal any law authorizing the levy of a tax by any town, county or city, for the purpose of paying the interest or principal of any bonded or other debt authorized by law; and there shall be retained of the money collected according to the maximum rate of taxation established by the provisions of this act, by the officers of towns, counties and cities, a sum sufficient annually to meet the annual maturing bonded obligations of the town, county or city.

§ 16. The State board of equalization, in all equalizations made after the first of December, 1871, shall equalize both the real and personal valuations in the counties of this State, by adding to the

aggregate valuation of real and personal valuations in each county, such sum on the hundred as will bring the aggregate real and aggregate personal valuation up to the full actual valuation, and thus equalize by a full valuation in every county; and no deduction shall be made in either the real or personal valuation of any county, unless the valuation shall exceed the actual full valuation; but they shall in no instance reduce the aggregate personal or real valuation of all the counties below the valuations thereof as returned by the boards of supervisors to the Comptroller's office.

§ 17. The provisions of any law of this State inconsistent with the provisions of this act, are hereby repealed.